No. 12511.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, WILLIAM K. DIVERS, O. K. LAROQUE, J. ALSTON ADAMS, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, JOHN H. FAHEY, A. V. AMMANN and GEORGE K. BRAMLEY (Defendants below),

Appellants,

v.

MALLONEE, BUCKLIN and FERGUS, *i. e.,* the SHAREHOLDERS PROTECTIVE COMMITTEE OF THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION (Plaintiff in 5421-P.H. below) *et al.,*

Appellees,

— — — — — — — — — and consolidated case — — — — — — — — —

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.* (Defendants below),

Appellants,

v.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.* (Plaintiffs in 5678-W.M., below),

Appellees.

BRIEF FOR APPELLEE-PLAINTIFF

(Shareholders Protective Committee)

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INDEX OF PARTIES AND DESIGNATIONS.

Because of the long and complicated names and the great number of parties involved in this litigation, where the context will permit, they will be variously referred to by the following abbreviated designations, unless the context otherwise indicates:

AMMANN—Refers to A. V. AMMANN, and his co-defendant, George K. Bramley, appellants here (both served within the State of California, and who were at all times the agents of the Home Loan Bank Commissioner, John H. Fahey and his successor, the Home Loan Bank Board, and their alter ego, the Federal Savings and Loan Insurance Corporation. The appellant-defendants, A. V. Ammann and George K. Bramley, were in charge of the seizure of the Long Beach Federal Savings and Loan Association and its assets. They dealt with, and transferred the assets of said association to, their co-defendant-appellant, Federal Home Loan Bank of San Francisco, a "sue and be sued" corporation which also was served within the State of California.

APPELLANTS—(Plural) refers to the appellant-defendants—William K. Divers, O. K. LaRoque, J. Alston Adams, the Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation (who are all one and the same), and to the appellant-defendants, A. V. Ammann, John H. Fahey and George K. Bramley. The three individuals —Divers, LaRoque and Adams, are the individuals who now comprise the Board and are the sole trustees of the Federal Savings and Loan Insurance Corporation (12 U. S. C. 1725 (a)), or "National Housing Act, Sec. 402(a)).

APPELLEE—(Singular) refers to the plaintiff in the original class action (No. 5421-P. H. below), the Shareholders Protective Committee of the Long Beach Federal Savings and Loan Association originally consisting of Mr. Paul Mallonee, C. H. Newhouse and Winnie Bucklin.

Due to the demise of Paul Mallonee and C. H. Newhouse, new members were elected, and the Committee now consists of Flora Mallonee, Mabel Fergus and Winnie Bucklin. The Committee has received written authorization to conduct this litigation from more than fifty per cent of the 16,000 shareholders, and has been licensed by the Division of Corporations of the State of California (1951 California License No. 80282LA).

APPELLEES—(Plural) refers to the appellees here collectively, who are (1) Mallonnee *et al.* (the Shareholders Protective Committee of the Long Beach Association), plaintiffs in class action No. 5421-P. H. (below), (2) the Long Beach Federal Savings and Loan Association, third-party plaintiffs and cross-claimants in said action No. 5421-P.H., (3) the Federal Home Loan Bank of Los Angeles, plaintiff in action No. 5678-W.M. (consolidated with No. 5421-P.H.), (4) First Federal Savings and Loan Association of Wilmington, one of the "Six Individual Associations," plaintiffs in said consolidated action 5678-W.M., (5) Title Service Company, cross-claimant in interpleader in action 5421-P.H., (6) George Turner, another cross-claimant in interpleader in action 5421-P.H., and, (7) Robert H. Wallis, cross-claimant in interpleader in action 5421-P.H.

ASSOCIATION—(Singular) refers to the Long Beach Federal Savings and Loan Association, an appellee here, the third-party plaintiff and cross-claimant, in action 5421-P.H. (below), from whom $26,000,000.00 in assets were seized by the appellants and ordered returned by the U. S. District Court (when necessary to distinguish from other associations, it will be referred to as the "Long Beach Association").

BANK OF LOS ANGELES—refers to the Federal Home Loan Bank of Los Angeles, an appellee here and the third-party defendant and cross-claimant in action

No. 5421-P.H. (below), and the plaintiffs in consolidated action No. 5678-P.H. (below), whose $46,000,000.00 in assets were seized, and are yet held by appellants-defendants.

BANK OF PORTLAND—refers to the Federal Home Loan Bank of Portland a "sue and be sued" corporation served in California, the appellant-defendant predecessor of the Bank of San Francisco which now holds and claims the title to the charter and assets of the Bank of Portland as well as the assets of the Bank of Los Angeles.

BANK OF SAN FRANCISCO—refers to the appellant-defendant, Federal Home Loan Bank of San Francisco, purportedly created by Federal Home Loan Bank Administration Orders No. 5082-3-4. If it legally exists at all, it is a "sue and be sued" corporation, served in California. It presently claims title to, and has possession of, all of the assets of both the Bank of Los Angeles and the Bank of Portland, whose charter it claims to be operating under.

BOARD—refers to the Home Loan Bank Board (three members) and its predecessor, the Federal Home Loan Bank Board (a.k.a. System, Administration or Commissioner) which consisted of only one man, *i. e.,* the appellant-defendant, John H. Fahey, from February 24, 1942 (Executive Order No. 9070-7 F.R. 1529—abolished the prior five-man bi-partisan board) to July 27, 1947 (Reorganization Plan No. 3-12 F. R. 4981—expanded to the three-man board). The Board is also the "Board of Trustees of the Federal Savings and Loan Insurance Corporation" (Sec. 2(2) of Reorganization Plan No. 3.)

CALIFORNIA APPELLANTS—refers to A. V. Ammann, George K. Bramley and the Federal Home Loan Bank of San Francisco, who are appellants here and defendants (below), who were all served with process in California.

COAST or COAST ASSOCIATION or COAST FEDERAL—refers to the Coast Federal Savings and Loan Association, one of the appellees here and one of the "Six Individual Plaintiffs" in action 5678-W.M. (below), and whose president, Joe Crail, is now a director of the appellant-defendant, Federal Home Loan Bank of San Francisco, a.k.a. Federal Home Loan Bank of Portland.

COMMITTEE—refers to the appellee (singular) *supra*, the Shareholders Protective Committee.

FAHEY—refers to John H. Fahey, an appellant and a defendant in 5421-P.H. (below), who was the former Federal Home Loan Bank Commissioner and sole member of the Home Loan Bank Board and, as such, the sole managing trustee of the Federal Savings and Loan Insurance Corporation (Executive Order No. 9070-7 F.R. 1529, Sec. 1(b), (c), (d), and Sec. 3 (App. Br. p. 140),* until December, 1947.

INSURANCE CORPORATION—refers to the Federal Savings and Loan Insurance Corporation, a "sue and be sued" corporation, an appellant here and a defendant in 5421-P.H. (below) which at all times has been, and now is, doing business within the State of California, collecting premiums from financial institutions throughout the State of California, and, through its agents in California, has been, and is, supervising and dealing with institutions in California (Banks 12 U. S. C. 1725(c) (4)). The present representative and agent of the Federal Savings and Loan Insurance Corporation at Los Angeles, California, is Mr. Frank C. Noon.

INTERVENORS—refers to approximately fifty Home Owner Appellee borrowers who have intervened in action No. 5421-P.H. (below) to clear the titles to more than 400 homes and who have interplead into the Registry of the Court approximately $1,500,000.00.

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*"App. Br. p. 140" refers to the Appellants' Brief herein.

NORTHERN TEN ASSOCIATIONS—refers to the ten associations located in Northern California, who, in 1948, as plaintiffs, commenced action No. 28203-G in the United States District Court for the northern District of California, Southern Division, involving some of the same properties, issues and parties and which is now enjoined.

PLAINTIFF—(Singular) refers to the appellee (*supra*)—the Shareholders Protective Committee.

SHAREHOLDERS PROTECTIVE COMMITTEE—refers to the appellee (*supra*).

SIX ASSOCIATION PLAINTIFFS—refers to the six individual associations (appellees here), plaintiffs (below), in consolidated action No. 5678-W.M., who sued on behalf of the class of approximately 172 building and loan, and Federal savings and loan associations, stockholders in the seized Bank of Los Angeles.

STOCKHOLDERS' COMMITTEE—refers to the Stockholders' Committee of the Federal Home Loan Bank of Los Angeles—plaintiffs in action 5678-W.M. (below).

TITLE SERVICE—refers to the Title Service Company, an aplee here, and the defendant and cross-complaint in interpleader, in 5421-P.H. (below), who was trustee on approximately $12,000,000.00 of notes and deeds of trust seized by appellants-defendants.

U. S. DISTRICT COURT—refers to the United States District Court for the Southern District of California, Central Division (Honorable Peirson M. Hall, United States District Judge, has been a respondent before the

United States Supreme Court and before the Court of Appeals for the Ninth Circuit on applications of the appellants for Writs of Prohibition, etc., all of which have been denied.)

WASHINGTON APPELLANTS—refers to the appellant-defendants, Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation; William K. Divers, O. K. LaRoque, J. Alston Adams, who are now both the members of the Board and the sole Trustees of the Corporation, and the defendant-appellant, John H. Fahey, former Home Loan Bank Commissioner, then sole trustee of the Federal Savings and Loan Insurance Corporation, who were all served with process and pleadings in Washington, D. C. In the interest of brevity and as they are all one and the same, they will, whenever possible, be referred to collectively as the "Washington Appellants."

WILMINGTON ASSOCIATION—refers to the First Federal Savings and Loan Association of Wilmington, an appellee here and one of the six individual association plaintiffs in consolidated Action No. 5678-W.M. (below), suing on behalf of the class of approximately 172 building and loan and Federal savings and loan associations, stockholders in the seized Federal Home Loan Bank of Los Angeles.

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.....6, 34, 37, 42, 44, 46, 50, 107

United States Code, Title 28, Sec. 2361 .....
.....6, 34, 44, 46, 49, 98, 107

United States Code Appendix, Title 50, Sec. 601 6

No. 12511.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, WILLIAM K. DIVERS, O. K. LAROQUE, J. ALSTON ADAMS, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, FEDERAL HOME LOAN BANK OF SAN FRANCISCO, JOHN H. FAHEY, A. V. AMMANN and GEORGE K. BRAMLEY (Defendants below),

Appellants,

v.

MALLONEE, BUCKLIN and FERGUS, *i. e.,* the SHAREHOLDERS PROTECTIVE COMMITTEE OF THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION (Plaintiff in 5421-P.H. below) *et al.,*

Appellees,

— — — — — — — — and consolidated case — — — — — — — —

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.* (Defendants below),

Appellants,

v.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.* (Plaintiffs in 5678-W.M., below),

Appellees.

BRIEF FOR APPELLEE-PLAINTIFF
(Shareholders Protective Committee)

APPEAL

From

PRELIMINARY INJUNCTION WITH FINDINGS
[R. 8194-R. 8555][1]

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[1]"R." 8194, etc., refers to page numbers in the printed record on this appeal, No. 12511, where the "Preliminary Injunction with Findings" appealed from, appears.

ISSUES
THIS IS A JURISDICTIONAL DISPUTE!

The appellants state:

"The only material issues are:

1. Whether the court below had jurisdiction over the persons of the non-resident defendants *for any* purpose, and

2. Whether *any* of the pleadings state a claim for relief within the jurisdiction of the court below." (App. Br. p. 81.)[2] (Emphasis and numerals added.)

Apparently, the appellants concede that the U. S. District Court at Los Angeles had general jurisdiction over the action *in rem,* No. 5421-P.H.

The U. S. Supreme Court has twice so decided, (1) *Fahey v. Mallonee,* 332 U. S. 245, (2) *Ex parte Fahey,* 332 U. S. 258 (1947).

This United States Court of Appeals for the 9th Circuit has three times so decided, (1) *Ammann v. Mallonee,* No. 11751—Supersedeas denied; (2) *Fahey, San Francisco Bank, etc. v. U. S. District Judge Hall*—Petition for Writ of Prohibition, Mandamus, etc., denied June 6, 1950, no number; (3) *Fahey v. O'Melveny & Myers, W. I. Gilbert, etc.,* No. 12591—Supersedeas denied.

Three other appeals by the appellants are now pending here in addition to this appeal, No. 12511.

How many more times will the appellants attack the Court's jurisdiction?

Upon this appeal from the granting of a preliminary injunction for the purpose of preserving the "status quo"

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[2]"App. Br." refers to the Appellants' Brief herein.

it must be presumed that the allegations of the complaints are true, at least until such time as trial is had on the merits. *Brooklyn Trust Co. v. Kelby,* 134 F. 2d 105 (1943), certiorari denied, 319 U. S. 767; 87 L. Ed. 1717.

The questions listed by the appellants on pages 21 and 22 of their brief all omit the presumed to be true allegations of a fraudulent conspiracy, whereby California property was fraudulently seized from the California owners.

Adding of the element of fraudulent conspiracy to each of these questions makes the answer to such questions obvious.

We submit that this United States District Court has jurisdiction to hear and determine the allegations of this replevin action for the recovery of property wholly located within its District, owned by parties residing within its District, seized by a fraudulent conspiracy committed within its territorial jurisdiction, by agents, employees, subsidiaries and co-conspirators acting within, and served within, the territorial jurisdiction of the Court, even though the non-resident "master minds" who directed the fraudulent conspiracy were served outside of the State of California, pursuant to appropriate Court Orders.

To now dissolve this Preliminary Injunction, before trial on the merits, would be to permit the appellants to consummate the fraudulent conspiracy of which they are accused.

We address ourselves to the only "material issues" (App. Br. p. 81):

1. "Whether the Court below had jurisdiction over the non-resident defendants, for *any* purpose, and

2. Whether *any* of the pleadings state a claim for relief within the jurisdiction of the Court below."

SCOPE OF APPEAL.

On an appeal from a Preliminary Injunction the Appellate Court need decide only three issues:

First: Did the trial court have jurisdiction?

Second: Were there any allegations in the pleadings sufficient to sustain any relief?

Third: Was the issuance of a Preliminary Injunction an abuse of the trial court's discretion?

When the Appellate Court finds any allegation in any affirmative pleading entitling any complainant to a trial on the merits, a Preliminary Injunction preserving the status quo pending trial can be affirmed.

In *Deckert v. Independent Shares Corp.,* 311 U. S. 282, 85 L. Ed 189 (1940), in reinstating the Preliminary Injunction granted by the District Court and dissolved by the Circuit Court, the U. S. Supreme Court states:

(Page 289):

> "It is enough at this time to determine that the bill contains allegations which, if proved, entitled petitioners to some equitable relief . . . Hence, if the District Court had jurisdiction it was proper to consider whether injunctive relief should be given in aid of the recovery sought by the bill.
>
> . . . . . .

(Page 290):

> We hold that the injunction was a reasonable measure to preserve the status quo pending final determination of the questions raised by the bill. It is well settled that *the granting of a temporary injunction pending final hearing is within the sound discretion of the trial court.* . . ."

To the same effect, see *Munoz v. Porto Rico Ry. Light & Power Co.,* 83 F. 2d 262 (1936) Certiorari denied, 298 U. S. 689; 80 L. Ed. 1408; *Rogers v. Hill,* 289 U. S. 582, 77 L. Ed. 1385 (1933). It is to the discretion of the trial court, not to that of the Appellate Court, that the law entrusted the granting or refusing of Preliminary Injunctions. The only question is does the proof clearly establish an abuse of the trial court's discretion. *Love v. Atchison, Topeka & Santa Fe Ry. Co.,* 185 Fed. 321 at 331 (1911); *Ohio Oil Co. v. Conway,* 279 U. S. 813, 73 L. Ed. 972 (1929). If abuse of discretion is not clearly established the granting of the Preliminary Injunction must be affirmed.

JURISDICTIONAL STATEMENT.

The U. S. District Court had, and has, jurisdiction of this *quasi in rem* action to replevin property within its territorial jurisdiction. It is alleged the amount involved is approximately $70,000,000.00 and there is diversity of citizenship (California associations, banks, shareholders and stockholders vs. foreign defendants Ammann of Maryland, Fahey of Massachusetts, Divers of Ohio, LaRoque of North Carolina, Adams of New Jersey, The Home Loan Bank Board and The Federal Savings and Loan Insurance Corporation, claiming residence in Washington, D. C., but doing business in California.) The nonresident defendants have all been served with process, either in California, or pursuant to Court Order for service on absent defendants whereever the U. S. Marshal could find them.

Likewise, many substantial Federal questions were, and still are, present in the action.

Some of the Federal enactments, the validity and construction of which are placed in issue by the pleadings are: (a) "Home Owners Loan Act of 1933" (48 Stat. 128, 12 U. S. C. 1461, etc.), (b) "Federal Home Loan Bank Act" (47 Stat. 725, 12 U. S. C. 1421 *et seq.*), (c) "The National Housing Act" (48 Stat. 1246, 12 U. S. C. 1701, etc.), (d) "The First War Powers Act of 1941" (55 Stat. 838, 50 U. S. C. App. 601) and "Executive Order No. 9070" thereunder, (e) "Reorganization Act of 1945" (59 Stat. 613, 5 U. S. C. 133Y, etc.), (f) Rules, Regulations, Directives and Orders claimed to have been adopted pursuant to the authority of said Acts and many others [R. 2, 287, 323, 566, 2962, 3190, 6738, 6802, 6852, 9466, and others].

The U. S. District Court also has jurisdiction (1) of the property, *i. e.* the *res,* as a local Court acting *in rem,* (2) by quiet title Statute 28 U. S. C. 1655 (Former 118), (3) by interpleader Statute 28 U. S. C. 2361 and Rule 22, F. R. C. P., and (4) by right of judicial review of Administrative Acts impinging upon personal rights, (a) by Administrative Procedure Act 5 U. S. C. 1001, etc., and (b) inherent in Courts of Law.

These appellees concede the U. S. District Court at Los Angeles had, and has, full and complete jurisdiction of the subject matter and parties.

It is not disputed that this 9th Circuit Court of Appeals has jurisdiction of this appeal under 28 U. S. C. 1292, unless this Honorable Appellate Court is of the opinion that the amendment to Rule 54(b), F. R. C. P., (effective March 19, 1948) makes a Preliminary Injunction a non-appealable Order unless it "expressly determines that there is no just reason for delay and expressly directs the

forthwith entry of judgment", which this Preliminary Injunction here appealed from does not do.

The "Washington Appellants" who were served pursuant to Order of Court for service upon absentee defendants, contend they have not submitted to the U. S. District Court's jurisdiction, although this appellee contends otherwise. It is submitted that this appeal of the "Washington Appellants" seeking affirmative relief either constitutes their submission to the jurisdiction of the trial court, or the "Washington Appellants" not having submitted themselves to the jurisdiction of the trial court, they could not appeal and their appeal should be dismissed. *Sawyer (Secretary of Commerce) v. Dollar,* No. 10868 (C. C. A., D. C.) January 31, 1951—application for review by U. S. Supreme Court pending. *U. S. v. Siegel,* 168 F. 2d 143, 83 U. S. App., D. C. 88 (1948); *Van Sweringen Corp. et al., Eastman et al. v. Leckie,* 180 F. 2d 119 (1950).

NATURE OF THE ACTION.

This is a class action in the nature of replevin, filed on behalf of the shareholders of a solvent "local, mutual thrift institution" (12 U. S. C. 1464 (a)) brought to recover the property of the Association, consisting of realty, notes secured by trust deeds on realty, bonds, cash and other personal property, all located in Southern California. The action seeks to remove the clouds and encumbrances imposed upon said realty and personal property by the wrongful seizure and retaining of said property by the appellants under a wrongful claim of authority.

The same *"modus of operendi"* was used as was used sixty days before by the appellants-defendants in summarily, without notice, hearing or cause, seizing, liquidating and dissolving the solvent Bank of Los Angeles and comingling its assets with the assets of the Bank of Portland, a. k. a. the Bank of San Francisco.

The title to the complaint as amended, states the action is "to cancel the fraudulent and void appointment of conservator, to quiet title, for return of property, for declaratory relief, for accounting and injunction" [R. 2960]. It contains seven causes of action comprising 107 typewritten pages, or 134 printed pages [R. 2960-3094] and the prayer [R. 3088-3094] demands, among other things, that the duly elected officers of the Long Beach Association "be restored to full possession of all of the property and assets of Association"; that the conservator be removed; that title of the appellee (the plaintiff-shareholders) be quieted; that the appellants and each of them be enjoined from asserting any claim to the properties; that all of the defendants (naming a long list of them) and all others who had any possession, control or management of any of the assets of the Association be ordered to account for all such assets and the income therefrom; that the appellants be restrained and enjoined from interfering with the lawful management, possession, control and operation of the Association and its assets; and that all costs, expenses and attorneys' fees incurred in recovering such assets be determined and assessed [R. 3088-3094].

On May 23, 1949, after the officers of the Association regained possession of various bonds, insurance certificates and contracts, a supplement to the first amended and supplemental complaint was filed joining as party defendants, with appropriate allegations, the Home Indemnity Company and the Federal Savings and Loan Insurance Corporation [R. 6798-6846].

The action sounds in replevin to recover the assets of the shareholders of the Long Beach Association wrongfully seized and converted by the Appellants; for the reasonable value of all assets not returned; to quiet title in, and to remove clouds from, the title to the assets recaptured; and for the costs and expenses of recovery.

The complaints as amended state causes of action.

See this appellee's-shareholders Protective Committee, Mallonee, etc., Plaintiff's-complaint [R.2] as amended [R. 2960] and supplemental [R. 6798]; appellee, Long Beach Association's third-party complaint [R. 287] and cross-claim [R. 323] as amended [R. 3188] and supplemental cross-claim [R. 4161] and second cross-claim [R. 6737]; appellee Bank of Los Angeles, cross-claim in 5421—P. H. [R. 564] and complaint in consolidated case 5678—W. M. [R. 9465]; appellee Title Service Company's cross-claim in interpleader [R. 43] and supplements thereto, first [R. 766] and second [R. 995] and third [R. 2305] and fourth [R. 2581]; appellee Robert H. Wallis' cross-claim-in-interpleader [R. 87]; appellee George Turner's cross-claim-in-interpleader [R. 3461] and amendment [R. 3640].

THE ACTION IS LOCAL IN CHARACTER AND IN REM IN NATURE.

DESCRIPTION OF LITIGATION.

This litigation has thus far involved fifteen proceedings in State and Federal, Trial and Appellate Courts, and two Congressional Investigations (one of which is still pending). Such proceedings are:

In the U. S. District Court, Southern District of California:

(1) No. 5421—P. H., commenced May 27, 1946, to recover the Long Beach Association and its assets.

(2) No. 5678—P. H., commenced August 22, 1946, to reactivate the Bank of Los Angeles and to recover its assets.

(3) No. 7989—P. H., commenced February 17, 1948, by only two shareholders—remanded to California State Court and enjoined.

In the U. S. District Court, Northern District of California:

(4) No. 28203—G, commenced July 22, 1948, by ten Northern Associations to prevent settlement—enjoined by U. S. District Court.

In the Superior Court of the State of California, In and for the County of Los Angeles:

(5) No. L. B.—C. 14492, commenced January 16, 1948, by only two shareholders.

All the foregoing are either consolidated with, or enjoined by, the main action, No. 5421—P. H. in the U. S. District Court.

In the U. S. Supreme Court:

(6) *Fahey v. Mallonee,* 332 U. S. 245, 91 L. Ed. 2030 (1947), remanded for trial.

(7) *Ex parte Fahey,* 332 U. S. 258, 91 L. Ed. 2041 (1947), Writ of Prohibition, Mandamus and/or Injunction against the U. S. District Judge, denied.

In the U. S. Court of Appeals for the Ninth Circuit:

(8) Ammann v. Mallonee, No. 11751, appeal from Order allowing Attorneys' fees to counsel for these appellees, dismissed, February 6, 1948.

(9) Fahey v. Mallonee, No. 11867, appeal from Intervention Orders clearing title to homes in Southern California, dismissed April 19, 1948 [R. 3976].

(10) Fahey v. Mallonee, No. 12511, this appeal is one of four presently pending before this Honorable Ninth Circuit Court of Appeals. The record on this single appeal comprises twenty-four (24) volumes of over 11,000 printed pages. THIS DOES NOT INCLUDE ALL OF THE RECORD. The clerk's transcript comprises 19,142 pages. Only a small portion of the reporter's transcripts of more than 100 hearings has been printed. Plate A is a photograph of part of the files found by the trial court, in single copies, to weigh in excess of 150 pounds, as of March 1946 [R. 6461].

(11) Petition of Fahey, *et al.,* for leave to file a Petition for a Writ of Prohibition, Mandamus or other appropriate writ, v. U. S. District Judge, denied, June 1, 1950 (no number assigned).

(12) Petition of Federal Home Loan Bank of San Francisco, et al., for leave to file a petition for a Writ of Prohibition, Mandamus or other appropriate writ, v. U. S.

District Judge, denied, June 1, 1950 (no number assigned).

(13) Fahey v. Ronald Walker, Special Master, No. 12575-I, appeal from Order allowing fees to Special Master taken May 5, 1950 (pending).

(14) Fahey v. O'Melveny & Myers, etc., No. 12591, appeal from order allowing attorneys' fees, taken June 20, 1950 (pending).

(15) Fahey v. Ronald Walker, Special Master, No. 12575-II, appeal from Order allowing fees to Special Master, taken November 29, 1950 (pending).

Appellants, at this stage of the proceedings, by this appeal, seek to dismiss and nullify all of the above listed matters. The appellants claim the U. S. District Court for the Southern District of California, where the acts complained of occurred and where all of the properties seized were, and are, located, lacked jurisdiction.

BEFORE THE CONGRESSIONAL INVESTIGATING COMMITTEE.

(16) The Tenth Intermediate Report of the Select Committee to Investigate Executive Agencies, 79th Congress, 2nd Session, Investigation of Federal Home Loan Bank Administration, dated July 25, 1946 (House report No. 2659), recommended (1) the immediate reactivation of the Federal Home Loan Bank of Los Angeles and (2) the restoration of the Long Beach Federal Savings and Loan Association (copy of said Congressional Report is filed concurrently herewith and incorporated herein by reference) [R. 9107-9191].

STATEMENT OF FACTS.

Counsel for this appellee has read the statements of fact as set forth in the brief of the appellants and as set forth in the brief of the appellee, Long Beach Association.

The statements of fact as given by the appellants is inaccurate, incorrect and incomplete in many particulars and, hence, this appellee disagrees with appellants' statement of fact.

The statement of fact contained in the brief of the appellee, Long Beach Association is correct and, in the interest of brevity, is hereby adopted by this appellee as its statement of facts.

Some pertinent facts will be stated here.

On May 27, 1946, this appellee (the plaintiff-shareholders Protective Committee—Mallonee, *et al.*) filed this class action (Mallonee v. Fahey, No. 5421—P. H.) [R. 2] on behalf of the 16,000 shareholders of the Long Beach Association, to recover possession of their solvent Association and approximately $26,000,000.00 of assets which the appellants had summarily seized on May 20, 1946.

The appellants are accused of a fraudulent conspiracy whereby they twice seized California real and personal property from Californians. On March 29, 1946, the solvent Bank of Los Angeles and its assets of $45,000,000.00 had been similarly seized.

The "Modus of Operendi" in both seizures was the same, *i. e.,* summary seizure without notice or hearing, by Orders purportedly adopted in Washington, D. C., concurrently with their certification in Los Angeles, California, by the seizing agents who gave no receipts [R. 116].

The seizure of the Long Beach Association in 1946 caused a run of withdrawals of savings of approximately

$6,000,000.00 in the first six days, and ultimately depleted its savings deposits by approximately $10,000,000.00.

Plate B, attached, is a photograph of the run of withdrawals of approximately $6,000,000.00 in the first six days, which occurred on appellants' first seizure of the Long Beach Association, in May of 1946, and ultimately depleted its savings accounts by approximately $10,000,000.00 [Exhibit 11-7-49-1, R. 8210].

Plate C, attached, is a graphic picturization by chart of the growth of the Association prior to the run, the extent of the run of withdrawals, and the rebuilding of the Association after its founding management was restored in January of 1948 by a final judgment of the U. S. District Court [Ex. 11-7-49-13, R. 8215].

The appellants have confessed judgment *in re* the Long Beach Association seizure [Home Loan Bank Board Order No. 388, January 17, 1948, R. 8231].

The District Court, on January 23, 1948, ordered restoration of all of the assets of the Long Beach Association and a "full and complete accounting" [R. 8310].

The Restoration Order of January 23, 1948, was not appealed and has now become final (App. Br. pp. 34-35).

Some of the assets of the Long Beach Association have been restored, but a "full and complete accounting" satisfactory to the Court, has not yet been made by the appellants [R. 8992].

Prior Administrative hearings set by Board Order No. 5309 [R. 8219] after protest by this appellee, the Shareholders Protective Committee, were abandoned by the appellants on December 6, 1947 [Order No. 169, R. 8231] after the completion by their own examiners of a 350 page "Report of Examination and Audit" of the Long Beach

Federal Savings and Loan Association, as of May 18, 1946, and October 2, 1946 [Ex. Identification Only "C", R. 8217] which reviewed and criticized the transactions of the Association from its organization in 1934 with $7,500.00 of savings, until it was seized twelve years later from its more than 16,000 shareholders whose savings invested exceeded $22,000,000.00 and with gross assets in excess of $26,000,000.00 and surplus, reserves and undivided profits of more than $1,300,000.00 [R. 361].

The accused appellants, by their Order 2015, seek to again reseize possession of the restored properties of their accusers, the Long Beach Association.

To accomplish this, the accused appellants proposed to hold an Administrative hearing before themselves (The Home Loan Bank Board) to appoint themselves (as the Federal Savings and Loan Insurance Corporation) receivers [Board Order No. 2015, R. 8244] to liquidate their accusers, the Long Beach Association, and to reseize its assets (including claims against themselves) and to liquidate this litigation without judicial determination or satisfaction of the claims against themselves and their subsidiaries.

The appointment of the Federal Savings and Loan Insurance Corporation "shall be for the purpose of liquidation" (Sec. 148.1 of Part 148, Title 24, Code of Federal Regulations, 1949 edition).

> "The members of the Federal Home Loan Bank Board constitute the Board of Trustees of the corporation" (The Federal Savings and Loan Insurance Corporation, a "sue and be sued" corporation) (National Housing Act, Sec. 402(a) 12 U. S. C. 1725; App. Br. p. 133 and 143).

The Preliminary Injunction, the subject of this appeal, was issued by the United States District Court to preserve the "status quo" of the litigation and of the property ordered restored, until appellants can be tried on the merits of the accusations of fraudulent conspiracy made against them in the pleadings.

The Preliminary Injunction appealed from restrains the accused appellants from appointing themselves receivers to liquidate their accusers and this litigation against themselves without a trial on the merits.

PURPOSE OF THIS LITIGATION.

The purpose of this litigation is:

1. To recover possession of the Long Beach Association and all of its assets and restore them to the possession of a management elected by the owners, the shareholder investors, and

2. To remove the conservator, appellant Ammann, and to require an accounting for the assets of the Association and the increments thereof, and

3. To recoup the reasonable value of any assets not recovered, and

4. To remove all clouds and unlawful encumbrances from the title to the property and assets of the Long Beach Association, including the cloud and encumbrance of the $6,300,000.00 of notes and pledge agreements claimed by the appellant, Bank of San Francisco, to have been executed by the appellant, Ammann, as a pledge of the Long Beach Association's assets, and

5. To quiet title to its assets in said Association and its shareholder members, free from unlawful clouds and encumbrances, and

6. To enjoin and restrain further unlawful interference with the lawful management and control of the Association and its assets, and

7. To require the reactivation of the Bank of Los Angeles and the restoration to it of all of its assets so that the value of the stock and rights of the Long Beach Association in said Bank of Los Angeles will be restored.

8. To have the rights of the defendants, and all of them, and their duties to the plaintiff shareholders of the Long Beach Association adjudicated by a declaratory judgment of the Court, and

9. To recoup for the said Long Beach Association all of the costs and expenses of pursuit, recapture and recovery of said Long Beach Association and its assets (including its reserves, surplus, and undivided profits of more than $1,300,000.00).

Whenever it appeared that any person, corporation or legal entity claimed any title or right of possession, or control, of said Long Beach Association or any of its properties or assets, they were immediately joined as parties defendant in this litigation in the U. S. District Court at Los Angeles, where the property is located; where the acts of seizure occurred; and where the principal parties reside. This was done so that the U. S. District Court would have full knowledge of all claims and of all claimants to the Long Beach Association and/or its properties and assets. By so doing there has been provided a competent, appropriate, judicial forum in which all parties claiming any title, interest in, right to control or possession of, the said Association of any of its assets, may be heard and their respective claims and interests, if any, adjudicated in one impartial forum at one time.

The 16,000 shareholders of the Long Beach Association, by the institution of this Class action on May 27, 1946, have requested that the U. S. District Court determine whether or not they, the shareholder owners, have the right to have their Association and their savings deposited therein, managed by their duly elected directors and officers, whomever they may be!

The appellants-defendants, Ammann, Fahey and their co-conspirators in an effort to divert the attention of the Courts from themselves and their fraudulent acts, have tried, and are still trying, to confuse the issues by making counter-charges against the repeatedly elected founding directors and officers of said Association under whose management said Long Beach Association developed, in twelve years, from $7,500.00 initial savings, to more than $22,000,000.00 in savings invested, and more than $26,000,000.00 of assets and with surplus, reserves and undivided profits of more than $1,300,000.00 when it was seized by the appellants-defendants on May 20, 1946.

WHAT HAS BEEN ACCOMPLISHED.

Much has already been accomplished by this litigation.

By the final judgment of the U. S. District Court, made January 23, 1948, following the filing of the Board's confession of judgment (Order No. 388) and by the making of many other partial, but final, judgments and decrees:

1. The appointment of the conservator has been rescinded and the conservator-defendant, Ammann, removed and ordered to account, and

2. The possession of the premises and most of the books and records of the Long Beach Association restored

to the elected directors and officers, who have twice thereafter been unanimously re-elected by the 16,000 shareholders, owners of said Association.

3. A substantial portion, but not all, of the assets of the Long Beach Association have been recovered, and

4. The tangled titles of the Southern California homes of approximately 8,000 borrowers have been cleared and made marketable again.

WHAT REMAINS TO BE DONE.

Much still remains to be done, including among other things:

1. The recovery of the remainder of the assets of the Long Beach Association, including but not limited to, the recovery of:

(a) Stock in the Federal Home Loan Bank of Los Angeles, amounting to approximately $600,000.00,

(b) U. S. Government Bonds in the amount of approximately $8,300,000.00 which were being held for safekeeping by the Bank of Los Angeles on March 29, 1946, when it was seized and its assets converted by the Bank of San Francisco and/or Portland, a "sue and be sued" corporation, subsidiary of the "Washington Appellants,"

(c) The, as yet, unaccounted for notes and deeds of trust, or a surcharge for those not returned or satisfactorily accounted for,

(d) The rental from the hotel property owned by the Association when it was seized, and

(e) Excess insurance premiums, conservator's expenses, etc., unlawfully paid by the removed conservator, and

(f) U. S. Government Bonds and cash amounting to approximately $6,300,000.00 claimed to have been pledged by the conservator to the San Francisco Bank without authority and which are now interplead into the Registry of the U. S. District Court, or such portion thereof as the Court may ultimately determine should equitably be restored to the Long Beach Association,

(g) And many other as yet unaccounted for assets of the Long Beach Association.

2. The completion and settlement, or surcharging, of the accounting of the removed conservator who has not yet made a "full and complete accounting" as ordered by the U. S. District Court, January 23, 1948.

3. The recovery of the reasonable value of assets not returned or accounted for, if any. Upon the final settlement of the accounting of the removed conservator, appellant Ammann, it may be found that many assets have not been returned or accounted for.

4. The making of a final judgment removing any and all clouds and unlawful encumbrances from the title of the Long Beach Federal Savings and Loan Association in, and to, all of its assets.

5. The making of a permanent injunction forever restraining the appellant-defendants, and other parties, from ever unlawfully or improperly interfering with the shareholder owners' right to have their elected directors and officers manage and control all of their property, assets and savings deposited with, or invested in, the Long Beach Association, and

6. The making of a declaratory judgment adjudicating whether the Bank of Los Angeles or the Bank of San

Francisco is the duly qualified and constituted bank for this district of the Home Loan Bank System, and adjudicating in which bank the Long Beach Association and all other similarly situated associations, in this district, now own stock, and

7. The determination of who is properly responsible for and shall pay for the costs and expenses of the pursuit, recapture and recovery of the Long Beach Association and its assets.

It is respectfully submitted that the appellant-defendants, who are accused of fraudulently seizing the assets of these appellee-plaintiffs, are not the proper persons or institutions to hear and determine this litigation against themselves, by Administrative hearing, or otherwise.

PURPOSE OF ORDER NO. 2015.

TO VACATE A FEDERAL COURT FINAL JUDGMENT BY ENJOINED DEFENDANT ADMINISTRATIVE AGENCY HEARING.

The appellant-defendants proposed to again reseize, for the second time, the Long Beach Association and its assets and thus by this second seizure, Order No. 2015, to liquidate this litigation against themselves by appointing themselves receivers to liquidate their accusers, the Long Beach Association, and thereby to indirectly vacate a final Court judgment.

The Federal Savings and Loan Insurance Corporation is the *alter ego* of the Home Loan Bank Board—both are controlled by the Board, *i. e.*, the appellants, Divers, LaRoque and Adams (Reorganization Plan 3 of 1947—12 F. R. 4981—Sec. 2(c), and National Housing Act,

Sec. 402(a)—12 U. S. C. 1721, etc. App. Br. pp. 133 and 143).

Order No. 2015 was issued September 9, 1949 [R. 8242], (a) more than three years after the commencement of this action (No. 5421-P. H.) in the U. S. District Court at Los Angeles, and (b) more than one and one-half years after the Home Loan Bank Board (Order 388) and the U. S. District Court [Judgment of January 23, 1948] had both made their Restoration Orders, rescinding the appointment of the conservator and directing:

(1) That the Long Beach Association and its assets be restored to its elected directors and officers, and

(2) That the removed conservator (appellant Ammann) render a "full and complete" accounting.

The Court, on February 10, 1950, after hearing, found that a "full and complete" accounting satisfactory to the U. S. District Court has not yet been rendered [R. 8992]. Until a "full and complete" accounting is rendered, objections thereto (if any) heard, determined, and settled to the satisfaction of the U. S. District Court, the Long Beach Association and its management do not know the extent of its assets to be recovered from the appellants, nor the extent of the liabilities created by the appellant, Ammann, for which the Long Beach Association is to be held accountable.

The officers of the Long Beach Association cannot certify to the accuracy of the books and records kept by the appellants, Ammann, etc.

As to Ground No. 1 of Order No. 2015, "Failure to File Reports" [R. 8242], the truth, obviously, is as found by the U. S. District Court in its Finding No. 67:

> "That the giving of the required monthly report, in the form required by said Board, under the circumstances in dispute in this litigation, including the said form of certification, would, or might, require said Association to prejudice, waive or abandon the litigation of the association's shareholders in the class action herein brought on behalf of said shareholders, without the consent, agreement or knowledge of said shareholders." [R. 8278. Also see Finding No. 66, R. 8277-8278.]

As to Ground No. 2 of Order No. 2015, "Refusal to furnish an affidavit regarding the correctness of the books" [R. 8242], the truth is as found by the U. S. District Court in its Finding No. 69:

> "That the President of said Association did make an affidavit as to the correctness of all entries and matters in said books and records of said Association, made or entered by said Association's officers and directors, that said affidavit contained provisos that all such entries were subject to the outcome of the within litigation and said affidavit declined to verify the accuracy of the entries in dispute in this litigation, and made by the defendant, Ammann, as purported conservator." [R. 8279.]

Said affidavit is attached to "Certificate of Examiner" in *re* examination as of July 16, 1949 [Ex. No. 11-7-49, No. 2, R. 8210]. The Examiner in charge, Clifford S. Turner, gave his receipt, acknowledging receipt of this affidavit [Ex. No. 11-7-49, No. 3, R. 8212].

As to Ground No. 3 of Order No. 2015, "Failure to pay insurance premiums in the amount of $36,487.25," the truth is as found by the U. S. District Court in its Findings No. 48 and No. 49:

[No. 48:]

> "Said statement in Order No. 2015 was made after said $36,487.25 was deposited and now is still on deposit in the Registry of this Court, in interpleader, deposited pursuant to Orders by this Court, for such deposit, after hearing, over the objections of defendant, Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, and the various members and trustees thereof respectively, defendant Ammann, conservator, and his, or their, various deputies or subordinates." [R. 8266.]

[No. 49:]

> "That the time for appeal from said Order of this Court for acceptance of deposit into the Registry of this Court in interpleader, of said sum of $36,487.25, has expired and lapsed, without any appeal therefrom having been taken." [R. 8266.]

As to Ground No. 4 of Order No. 2015, "Unspecified violations," including the items in the "more definite statement" of May 29, 1946, and the general "catch all" of "pursuing a course that was jeopardizing and injurious to the interests of its members, creditors and the public" [R. 8242-8244], the truth is that this Ground, likewise, is without substance or merit—mere generalities.

The appellant, Home Loan Bank Board, when it made restoration Order No. 388, dated January 17, 1948 [R. 8231], had full knowledge of, and had considered all of,

the so-called charges against the elected officers and directors of the Long Beach Association contained in:

(a) The first seizure Order, No. 5254, dated May 20, 1946 [R. 8229], and

(b) The so-called "more definite statement" of May 29, 1946 [R. 8218],

(c) Their own Examiner's exhaustive "Reports of Examination and Audits of the Long Beach Federal Savings and Loan Association as of May 18, 1946, and October 2, 1946, Docket No. 2905" [Ex. C, R. 8217].

This unverified Examiner's report, of approximately 300 pages, reviews, comments upon, and, in some instances criticizes the activities of the Long Beach Association from its inception in 1934 until after its seizure in 1946. All possible criticisms were fully explored and developed. This is the audit report which, though demanded in writing on October 17, 1946 [R. 842] was concealed by appellants from the shareholders of the Long Beach Association for more than three years, until suddenly, at 10:30 P. M. on November 7, 1949, in Court, the appellants attempted to have it introduced into evidence without disclosing it to opposing counsel [R. 8217].

The Home Loan Bank Board, with full and complete knowledge, and after extensive investigation, made its Order of Restoration No. 388, confessing judgment, which has been activated by final judgment of the U. S. District Court of January 23, 1948.

This should be conclusive as to the appellants' unsubstantiated defensive counter-charges made and considered prior to January 17, 1948.

Likewise, the said "more definite statement" and all of the charges therein were submitted to the Committee of the "Smith Committee" of the U. S. Congress, which, after full and extensive hearings, recommended:

> "(4) That the Commissioner revoke the Order appointing a conservator for the Federal Savings and Loan Association of Long Beach and restore the assets and affairs of the Association to its duly elected management, and render a proper accounting for the same, as expeditiously as is consistent with judicial determination of the questions at issue." (House Report No. 2659, p. 27, "Tenth Intermediate Report of the Select Committee to Investigate Executive Agencies"—"Investigation of Home Loan Bank Administration"—"Complaints of Federal Home Loan Bank of Los Angeles, Long Beach Federal Savings and Loan Association," 79th Congress, 2nd Session.)

No specific subsequent charges of any kind are made under Ground No. 4, of Order No. 2015. When it was made, on September 9, 1949, the appellant, Home Loan Bank Board also had the recent report of their own Examiner's investigation of the Long Beach Association, made as of July 15, 1949—Docket No. 2905 [R. 8211], which showed no mismanagement. According to said examination report of July 15, 1949, and the testimony of Clifford S. Turner, examiner-in-charge, the management of the Long Beach Association was not even claimed to have committed any violations since restored on January 24, 1948 [R. 10931 to 11001].

As to the final part of Ground No. 4, the indefinite allegation "and have pursued and are pursuing a course

that is jeopardizing and injurious to the interests of its members, creditors and the public," this, likewise, is too indefinite to be worthy of comment.

Since its restoration at least in part, to the management of elected directors and officers, on January 24, 1948, the Association has regained some ground: When seized, on May 20, 1946, the Association had invested savings amounting to more than $22,000,000.00. When restored, after twenty months of operation by appellant-defendant Ammann, as conservator, the Association had less than $13,000,000.00 of savings on deposit. Yet, at the present time, it has regained the confidence of the public of the community which it serves to such an extent that it now has savings deposits amounting to approximately $30,000,000.00. Order No. 2015 does not define just what is "injurious." Is it increasing savings deposits?

The appellants—Home Loan Bank Board—knew when they issued Order No. 2015, on September 9, 1949, that all of the grounds set forth therein were either false, unfounded or had been disposed of by their own prior Order of Restoration, No. 388, made January 17, 1948.

It is obvious that the stated "purposes" or "grounds" as set forth in Board Order No. 2015 are fictitious, false and not the true purpose of said Order.

The true purpose of Order No. 2015 may be inferred from the Order itself which requires the Long Beach Association to "show cause, if any it have, why The Home Loan Bank Board should not . . . enter its Order . . . for . . . the appointment of the Federal Savings and Loan Insurance Corporation, as receiver for said Association." [R. 8244.]

Traditionally, receivers are appointed for the purpose of liquidating institutions and this seems to be borne out by the provision of the Board's own Regulations:

> "The appointment of the Federal Savings and Loan Insurance Corporation to be receiver 'shall be for the purpose of liquidation.'" (Sec. 148.1, Part 148, "Rules and Regulations for the Federal Savings and Loan System with Amendments, to September 30, 1949—Ch. 1(c), Title 24, Code of Federal Regulations.)

The purpose of Order No. 2015 is for these appellants (Divers, Adams and LaRoque) as the Home Loan Bank Board, to preside as judges (Order No. 2015 provides hearings shall be held "before the Home Loan Bank Board. . . ."), at a mock hearing and to appoint the Federal Savings and Loan Insurance Corporation, that is, themselves (Divers, Adams and LaRoque are the sole trustees of the Federal Savings and Loan Insurance Corporation), to be the receiver of the Long Beach Association for the "purpose of liquidation."

The appellants would thereby "liquidate" this litigation against themselves, the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and their subsidiary, the Federal Home Loan Bank of San Francisco and/or Portland and/or Los Angeles (whichever exists) a "sue and be sued" corporation.

The appellants, by this devious proceeding, could, in effect, reverse the final judgment of the U. S. District Court, which ordered that the Long Beach Association and its assets, be restored to its duly elected directors and officers, and that the Board's representative, the appellant

Ammann, render a "full and complete" accounting, which he has, so far, been unable to do to the satisfaction of the Court.

Order No. 2015 is an order known to be false when made, deliberately made for a fraudulent purpose, to permit the holding of such a mock, so-called "Administrative hearing" would be to aid in the perpetration of a fraud.

PURPOSE OF THESE APPEALS FROM A PRELIMINARY INJUNCTION.

Appellants' principal purpose in this and the three other presently pending appeals before this Court of Appeals in this same litigation, is to nullify the proceedings in the fifteen (15) previously listed actions and appeals, and to vacate the final Orders and Judgments of the U. S. District Court (1) restoring the Long Beach Association and some of its assets to its owners, the shareholders, (2) requiring appellants to account for its assets, and (3) clearing the titles to thousands of Southern California homes, and (4) many other Orders which have been made during the almost five years of this litigation.

Appellants claim the Courts were at all times without jurisdiction. This claim is made despite the confession of judgment by resolution of the defendants, Home Loan Bank Board, which was required by its terms to be filed with the U. S. District Court [R. 8232]; despite dismissal in 1948, of two prior appeals to this Honorable Court of Appeals, which raised the same questions of jurisdiction; despite denials of Writs of Prohibition, Mandamus, etc., by the U. S. Supreme Court in 1947 and by this Honorable Court of Appeals in 1950, despite the fact that appellants have applied to, and received from, the Court below

affirmative relief, including, among other things, the posting of $1,000,000.00 bond by appellee, Long Beach Association [R. 3552 and 10333]; and despite the fact that in March, 1949, almost three years ago, appellants complied without appeal with the final Order of the U. S. District Court, and delivered into the Registry of that Court notes, deeds of trust, and U. S. Government Bonds, aggregating approximately $14,000,000.00.

Their claim of lack of jurisdiction in the U. S. District Court was urged by the appellants before the U. S. Supreme Court in 1947. The U. S. Supreme Court denied these appellants' application for a Writ of Prohibition, etc. (*Ex parte Fahey,* 332 U. S. 258, 91 L. Ed. 2041 (1947)), and remanded the case to the said U. S. District Court for further proceedings. The remand read, in part, as follows:

> "And it is further ordered that this cause be, and the same is hereby, remanded to the said District Court for proceedings in conformity with the opinion of this Court." [R. 2304.]

The U. S. Supreme Court, concurrently, in *Fahey v. Mallonee,* 332 U. S. 245, 91 L. Ed. 2030 (1947), said, in part:

> "Nor do we mean to be understood that if supervising authorities maliciously, wantonly, would, without cause, destroy the credit of a financial institution, there are not remedies." (Pp. 256-257.)
>
> "It is obvious that there is more to this litigation than meets the eye on the pleadings. . . ." (P. 257.)

This language, coupled with the quoted remand, was a direction to the Court below to proceed with the trial on the merits, of the issues of fraud and malice raised by the pleadings.

It is significant that rather than face a trial of these issues, even before their own Administrative hearing, the appellants on December 4, 1947, by their Order No. 139, "continued indefinitely" their Administrative hearing and, on January 17, 1948, adopted Resolution No. 388 [R. 3410] rescinding Order No. 5424 [R. 8229] of appointment of Ammann as conservator. Order No. 388 directed the return of the Association and its assets to the shareholders, from whom they had been seized, and required the appellant, Ammann, "to make a full and complete accounting" for such assets and to file such accounting with the said U. S. District Court. Order No. 388, by its terms required "that a certified copy of this Resolution be forthwith delivered to the above named Court. . . ." [R. 8231.]

Upon the filing of this confession of judgment (Order No. 388), and after hearing, the U. S. District Court, on January 23, 1948, made its Order of Restoration requiring that possession of the Association and its assets, be restored to the elected directors and officers. The Court appointed its Special Master to, among other things, supervise the complicated process of receipting for $26,000,000.00 in assets, represented in a large part by several thousand notes and deeds of trust, secured by thousands of homes in Southern California, and also represented by millions of dollars of U. S. Government bearer bonds, bank accounts, cash and securities, each and all of which were, likewise, physically situated in Southern California, within the district of the U. S. District Court at Los Angeles, California.

These appellants, by these appeals, now seek the sanction of this Appellate Court to permit them to hold a mock

(Administrative) hearing before themselves, to themselves review and reverse judgments of the U. S. District Court.

The real question is, are final judgments of Federal Courts subject to review and reversal by a defendant Administrative agency?

SPECIFICATION OF ERRORS (App. Br. pp. 22-23) REFUTED.

The sixteen so-called "specifications of error" urged by the appellants, on pages 22 and 23 of their brief, can be summarized as "legalistic smog" designed to irritate, divert, sidetrack and becloud judicial inquiry into the fraudulent conspiracy committed by, participated in, and now being maintained by the appellants, their co-conspirators, subsidiaries, agents and employees.

The appellants' so-called specification of error all are to the effect that it was error for the trial court to insist on the right of judicial inquiry into their conspiracy, and that the Judge committed error by failing to join with them in their efforts to whitewash such conspiracy without further inquiry or judicial determination.

FINDINGS OF FACT—SUPPORTED.

The "Washington Appellants," although served (November 19, 1949) [R. 8169] with proposed "Preliminary Injunction with Findings" ten days before it was signed on December 1, 1949, failed to file counter-findings or objections to the 84 Findings of Fact made by the U. S. District Judge, which comprised 82 printed pages and referred to eight exhibits attached thereto [R. 8212-8294]. Yet, the appellants, in their brief, intermittently attack the Findings of Fact as not supported by the evidence. The

appellants, however, nowhere in their brief point out any specific insufficiency of the evidence nor make any argument in support of their claim of lack of evidence.

Attacks upon Findings, unless supported by argument specifically pointing out the error or insufficiency of the evidence need not be considered on appeal. *Wingate v. Bercut,* 146 F. 2d 725 (C. C. A. 9, 1945).

In *Occidental Life v. Thomas,* 107 F. 2d 876 (C. C. A. 9, 1939), the Court cited with approval Rule 52, F. R. C. P., which provides:

> ". . . Findings of Fact shall not be set aside, unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses. . . ."

A mere reading of this "Preliminary Injunction with Findings" [R. 8194 to 8536, including exhibits] as stated by the Court in *U. S. v. Yellow Cab Co.,* 338 U. S. 338, 94 L. Ed. 150 (1949), indicates that (p. 341):

> "The judgment below is supported by an opinion, prepared with obvious care, which itemizes the evidence and shows the reasons for the findings. *To us, it appears that it represents a considered judgment of an able trial judge after patient hearing, but the Government's evidence falls short on its allegations*— a not uncommon form of litigation casualty, from which the Government is no more immune than others. . . . It ought to be unnecessary to say that Rule 52 applies to appeals by the Government as well as to those by other litigants. There is no exception which permits it, even in an anti-trust case, to come to this court for what virtually amounts to a trial *de novo* on the record of such findings as intent, motive and design."

In that case, like in the instant case, there was a bulky record, consisting of "1674 closely printed pages."

This appellee, therefore, has not made a detailed analysis of the evidence adduced at the more than 100 hearings in the U. S. District Court and the approximately 20,000 pages of Clerk's Transcript, only approximately 11,000 pages of which have been printed in the 24-volume record on appeal which is exclusive of most of the Reporters' Transcripts of said hearings.

SUMMARY OF ARGUMENT.

The U. S. District Court at Los Angeles had original nationwide jurisdiction, *in rem* or *quasi in rem,* over this action brought by California residents to recover local property or the value thereof, to remove all clouds from their titles, to require an accounting and to recoup the expenses of recovery.

In addition to the inherent jurisdiction of the local court over property within its district there is (a) statutory jurisdiction to quiet title and to remove clouds from local property (28 U. S. C. 1655 (former 118)), and (b) interpleader jurisdiction, both statutory (28 U. S. C. 1335, 1397, 2361 (former 41(26))) and inherent (Rule 22, F. R. C. P.), arising from the numerous interpleaders and interventions filed in the proceedings.

The doctrine of Sovereign's immunity to suit was not here involved as the United States is not a party.

There can be no indispensable parties in an action *in rem* or *quasi in rem* such as this. Only the property is indispensable.

The Court had jurisdiction for judicial review of the administrative orders involved (1) as an incident to the quiet title action, as the orders were the only muniments of color of title submitted by the appellants, (2) under the Administration Procedure Act (5 U. S. C. 1001, etc.), (3) by virtue of the inherent right of courts to judicially review administrative acts impinging upon personal rights.

The jurisdiction of the U. S. District Court at Los Angeles has become the Law of the Case and is *res adjudicata* because:

(a) The U. S. Supreme Court and this Ninth Circuit Court of Appeals have repeatedly denied Writs of Mandamus, Prohibition and/or Injunction and also Supersedeas, although each attacked the Court's jurisdiction.

(b) The U. S. Supreme Court declined to dismiss this action as requested by these appellants (App. Br. S. Ct. p. 101)[3] and instead, remanded the action to the U. S. District Court for further proceedings, *i. e.,* for trial on the merits.

(c) Many final, appealable judgments made by the U. S. District Court in the exercise of its jurisdiction have become final, either by appeals dismissed or failure to appeal.

(d) Many final appealable judgments made by the U. S. District Court have been recognized by other courts and

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[3]Refers to Appellants Brief, in the U. S. Supreme Court, No. 687, *Fahey v. Mallonee (supra).*

have been accepted and, in part, complied with by these appellants and by all parties, during the approximately five years of this litigation.

(e) Final judgments, though partial, establish the jurisdiction of the Court as the Law of the Case and become *res adjudicata* as to points adjudicated. Jurisdiction, either express or implied, is the essential preliminary foundation of all judgments. There is no right to litigate the same question twice.

The U. S. District Court having jurisdiction over the property in its district has jurisdiction to, and should, issue its Preliminary Injunction to protect its jurisdiction and to preserve the *status quo* pending a trial on the merits. Both generally, and by interpleader, the injunctive protection of jurisdiction is nationwide.

This appellee, plaintiff committee, have no administrative remedies to exhaust, as none were provided for the shareholder owners of the seized Association.

The proposed Administrative hearing Board, being a party defendant, is incapable of impartially trying itself or of rendering appropriate relief, as it would not have jurisdiction of either the *res* (property in California) or of the parties (the California owners and claimants).

A Preliminary Injunction rests in the sound discretion of the trial court and the U. S. District Court did not abuse its discretion in granting a Preliminary Injunction to prevent a recurrence of the $10,000,000.00 run of 1946 and other irreparable damage, and to preserve the *status quo* until the case can be tried upon the merits.

ARGUMENT.

I. JURISDICTION.

A. In Rem Jurisdiction to Quiet Title and to Remove Clouds From Title to Local Property Is Provided by 28 U. S. C. 1655 (Former 118).

This class action was brought under 28 U. S. C. 118 (now 1655) by the appellee-plaintiff (the Shareholders Protective Committee), on behalf of the 16,000 shareholder members of the Long Beach Association, to replevin their Association and its assets and to remove all encumbrances and clouds from the titles to their real and personal property within the territorial jurisdiction of the U. S. District Court at Los Angeles.

The assets of said Association constitute "property." *Omaha National Bank v. Federal Reserve Bank,* 26 F. 2d 884 (1928), decided that certificates of deposit were "property within the purpose and meaning of this Section." Certainly, if certificates of deposit are considered to be property, then actual physical assets owned by the Association and seized by the appellant Ammann, under the direction of his superior, the appellant, Fahey, consisting of money, bonds and notes secured by deeds of trust on California homes and real property, etc., must, necessarily, be considered to be property.

The taking of possession, the dealing with, transferring title to, and otherwise exercising the incidents of ownership over the property of the Association by the appellant and his co-defendant, appellant, Bank of San Francisco and others, certainly constituted encumbering and beclouding the titles to such real and personal property. These shareholder owners were deprived of their rights of

ownership, of their right to have their elected directors and agents handle and deal with their property.

In *Hunter v. U. S. Dept. of Agriculture,* 69 Fed. Supp. 377 (1946), it was held that the local U. S. District Court there had jurisdiction on behalf of occupants of a resettlement project in Texas to compel the Secretary of Agriculture to deliver title to minerals underlying their property and to remove the cloud to the titles to their lands. The test of a cloud upon the title to property is the practical effect the claim, even if unfounded, has on title or value or lessens the chance of free sale. *Carney v. Commonwealth Oil and Gas Co.,* 5 Fed. Supp. 304 (1933).

The defendant-appellant's, Ammann's unauthorized seizure of possession, dealing with, and conveying of title to the assets of the Association, whether outright or by way of pledge, certainly affected the title to such assets and undoubtedly lessened the chance of a free sale of such assets by their true owners, these shareholders.

The Citizens Savings, etc., Co. v. Illinois Central R. R. Co., 205 U. S. 46, 51 L. Ed. 703, 27 S. Ct. 425 (1907), like the instant case, was a class action brought by the stockholders to cancel certain deeds, leases and transactions. The trial court dismissed, but the U. S. Supreme Court held it to be a suit to remove clouds from the titles to the property of the stockholders of the railroad, reversed the dismissal and remanded the action to the trial court for further proceedings, as was, likewise, done in the instant litigation (*Fahey v. Mallonee,* 332 U. S. 245, 91 L. Ed. 2030 (1947)).

Commonwealth Trust Co. v. Reconstruction Finance Corp., 28 Fed. Supp. 586 (1939), was an action seeking to recover pigiron located within the District Court's

territorial jurisdiction, held by a local agent of the non-resident Reconstruction Finance Corporation. The Court stated:

(Page 587):

"We shall first consider the objection made to the jurisdiction of this court. Defendant, contends that as a corporation under the laws of the U. S. all of whose capital is owned by the U. S., and whose principal office is located in the District of Columbia, it is not suable in this district. These facts appear in a statute creating this corporation. Section 15 U. S. C. A. Sections 601 and 602."

(Page 588):

"The property involved in this law suit is located in this district. It is in the possession of the defendant through its authorized agent. The plaintiff claims he is entitled to this property. We therefore hold the defendant is sueable in this district in an action to recover it. If we find the plaintiff is entitled to it, we may then apply the proper remedy as authorized by the new Federal Rules of Civil Procedure. . . ."

"It also sets forth the claim of title, which the defendant asserts, and avers it is fraudulent and void as against the plaintiff."

"Assuming all this is true, the complaint presents a claim on which relief may be granted . . ."

The home offices of both the Banks of Los Angeles and San Francisco are within California; the stock in said banks is within California; the original, fraudulent, so-called dissolution, of the Los Angeles Bank occurred within California; the unauthorized transfer of the stock

of the Bank of Los Angeles to the Bank of San Francisco occurred in California, if at all.

The only part of the entire alleged conspiracy which is not in California is that the "master minds" the "Washington Appellants" who directed the alleged conspiracy, have attempted to evade the Court's jurisdiction, by remaining out of California. The absence from California of some of the alleged conspirators does not deprive the U. S. District Court of its jurisdiction over California properties and the California conspirators.

Jellenik v. Huron River Mining Co., 177 U. S. 1, 44 L. Ed. 647 (1900), was an action by stockholders of a Michigan corporation in Michigan to recover their stock allegedly fraudulently sold under assessment by non-resident defendant officers to non-resident defendants who bid in the stock in Boston, Massachusetts. The District Court dismissed the action on the ground that the non-resident defendant sellers and purchasers of the stock were indispensable parties.

In reversing, the U. S. Supreme Court stated:

(Page 13):

> "But the bill does show that the property represented by the certificates of shares is held by a Michigan corporation, which being subject personally to the jurisdiction of the Court, may be required by a final decree in a suit brought under the act of March 3, 1875, to cancel such certificates held by persons outside of the state and regard the plaintiffs as the real owners of the property interest represented by them. . . . The corporation being brought into court by personal service of process in Michigan and a copy of the order of court being served upon

the defendants charged with wrongfully holding certificates of the stock in question, every interest involved in the issue as to the real ownership of the stock will be represented before the court. We think the Circuit Court may rightfully proceed under the Act of 1875, for the purpose of determining such ownership, and that in dismissing the bill error was committed."

In *Harvey v. Harvey,* 290 Fed. 653 (1923), the action was brought in the U. S. District Court in Wisconsin to recover stock in a Wisconsin corporation, although the certificates of stock were in the possession of non-resident defendants. And, as here, a Preliminary Injunction was issued restraining non-resident defendants who there, as here, were objecting to the jurisdiction of the Court.

In affirming the Preliminary Injunction, the Court states:

(Page 659):

"Appellant's contention that the injunction granted relief *in personam* and therefore cannot be based upon service under Section 57 (Sec. 118, Title 28) which applies to actions *in rem* is not well founded. This suit is in the nature of a suit to quiet title to personal property within the jurisdiction of the court. The court has in its custody the *res.* It puts outs its protecting hand and says to the defendants that the plaintiff claims the *res;* that pending the determination of that claim the *status quo* shall be maintained and the defendants restrained from using the *res;* that if they desire to contest the claim of the plaintiff to this property they shall come into court and do so. . . . *These cases are appeals from the order granting a temporary injunction* and the order refus-

ing to vacate or dissolve the same. *The merits of the controversy between the parties are not before the court, except insofar as necessary to determine whether the plaintiff by his bill and affidavits has made out a case sufficient to sustain the temporary injunction. . . .*" (Emphasis added.)

Likewise, in *Thompson v. Emmett Irr. District,* 227 Fed. 560 (C. C. A. 9, 1915), which was a class action brought by bond holders to remove clouds (outstanding spurious stock) from title to the properties of the corporation, the trial court's dismissal was reversed on the ground that the action was properly brought within 28 U. S. C. 118 (now 1655).

Wherever possible, non-resident defendants have been served within the confines of the State of California. Those defendants who have evaded service by remaining outside of California have been served pursuant to Order of Court for service upon absent defendants by the U. S. Marshal in the respective districts where they could be located. Appellant Fahey was served in Washington, D. C. [R. 66].

Throughout the entire litigation the "Washington Appellants," the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, Commissioner and Trustee John H. Fahey, Board members and Trustees Divers, Adams and LaRoque, and their predecessors, have at all times been represented by counsel, both special counsel from Washington, D. C., such as Judge Ray Dougherty, William McKenna, Donald MacGuinaes, Melvin Seigel, Mose Silverman and numerous others, and at all times they also have been represented by members of the staff of the U. S. Attorney's office at Los Angeles, such as

Ronald Walker (now Special Master), James Carter (now U. S. District Judge), Arline Martin, Paul Fitting and others.

The "Washington Appellants" have appeared generally on many occasions through their counsel without reservation. For example, on April 7, 1947, the Court made its Order:

> "On Motion of Attorney Walker it is ordered that Ray E. Dougherty, Esq., be admitted and associated as counsel for defendants herein, namely, A. V. Ammann, individually and as conservator, and John H. Fahey, individually and as commissioner."
>
> "Attorney Dougherty argues in opposition to Motions for Attorneys' fees" without reservation.

The "Washington Appellants" have appeared generally by their consent to judgment of restoration. Resolution No. 388, rescinding the appointment of Ammann as conservator, directing that he render a "full and complete accounting" and that a copy be filed in the U. S. District Court at Los Angeles, as was done, was a confession of judgment. The U. S. District Court, after hearing thereon, made its order directing the restoration of said Association to its elected directors and officers. As no appeal was taken from this judgment, it has become final. It has been relied upon and acted upon by all parties, including the "Washington Appellants" and their subsidiary, the Federal Home Loan Bank Board of San Francisco.

The appellants' plea of "lack of jurisdiction" over the "Washington Appellants" is, of course, purely a technical, dilatory plea, as they have been furnished with all of the pleadings, affidavits and processes had and done in the

entire litigation and have at all times been kept apprised of the progress of the litigation, and have at all times, as they have deemed advisable, participated in the proceedings had and done in the past nearly five years of this litigation.

The Court has personal jurisdiction over the "California Appellants" by virtue of their having been served within the State of California. It has jurisdiction over the "Washington Appellants" both by virtue of their having been served by Order of Court as non-resident defendants, pursuant to 28 U. S. C. 118 and by their appearance, through counsel, at various times without reservation, as well as by their having sought affirmative relief such as their submission, to jurisdiction by this appeal and prior appeals.

It, therefore, appears that the U. S. District Court has jurisdiction of the subject matter and of the parties under 28 U. S. C. 1655 (former 118).

B. Interpleader Jurisdiction.

The U. S. District Court also has interpleader jurisdiction by virtue of (1) Interpleader Statutes, 28 U. S. C. 1335, 1397 and 2361 (former 41(26)), and (2) by Rule 22 of F. R. C. P., and (3) the inherent interpleader jurisdiction of courts.

Many interpleaders, and bills in the nature of interpleader, have been filed in this litigation. A verified cross-claim in interpleader was filed by the Title Service Company on June 4, 1946 [R. 43], and 174 notes, deeds of trust, etc., were deposited with the Clerk of the Court [R. 57]. Subsequently, Home Investment Company, by appropriate Court Order, was authorized to, and did, on

July 20, 1946 [R. 8288], pay off these notes by depositing $776,832.24 in lieu thereof in the Registry of the Court [R. 405]. A $50,000.00 certified check claimed by both the appellants, Ammann and Fahey (non-residents), and by the appellee, Attorney Robert H. Wallis (a California resident), was interplead [R. 86], and deposited in the Registry of the U. S. District Court at Los Angeles [R. 92] on June 12, 1946, where it still remains awaiting disposition by the Court. George Turner, on January 29, 1948, interplead $11,515.87 in rentals which had accrued under the terms of a lease on hotel premises owned by the Association, which the appellant, Ammann, had endeavored to cancel [R. 3461, etc.] and subsequently has interplead additional money, as rent accrues.

The Long Beach Association caused to be interplead into the Registry of the Court collateral securities in excess of $6,300,000.00 claimed by both the Bank of San Francisco and the Bank of Los Angeles, on notes executed by the appellant, Ammann, on which liability is denied by the Long Beach Association and, pursuant to Order of Court [R. 8399] filed March 13, 1948 [R. 3772, 3775-3780, etc.], there was interplead into the Registry of the Court said notes and collateral securities amounting to several millions of dollars.

Insurance premiums claimed by the non-resident Federal Savings and Loan Insurance Corporation, a "sue and be sued" corporation doing business in California, the amount of which premiums is denied by these plaintiffs, appellees, have been interplead by the Long Beach Association at various times into the Registry of the U. S. District Court, and as of February 1, 1951, now amounts to in excess of $55,487.25.

These various interplead sums and assets remain on deposit in the Registry of the U. S. District Court at Los Angeles pending further Order of the Court.

In the interpleader statutes, 28 U. S. C. 2361 (former 41(26)), as well as in the Quiet Title Statutes (28 U. S. C. 1655, former 118), provision is made for service of process "by the U. S. Marshal for the respective districts where the claimants reside or may be found." The "Washington Appellants" were served with the various complaints and cross-complaints in interpleader pursuant to appropriate Order of Court, by U. S. Marshals whereever they could be found [R. 82, 795, etc.].

Ry. Express Agency Inc. v. Jones, 106 F. 2d 341 (1939), was a class action instituted by Jones on behalf of the class of citizens of various states who had been victims of the Sir Francis Drake Estate solicitation. The proceeds of the fraud were in the possession of the defendant express agency who, as an affirmative defense, filed a bill in the nature of an interpleader as the funds were also claimed by the Collector of Internal Revenue for nonpayment of income tax by the perpetrators of the fraud.

In reversing the trial court's denial of interpleader, the Court stated:

(Page 344):

> "Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section (41-26) is absolute."

(Page 345):

"By proceeding under the counter-claim of the railway *express the jurisdiction of the court was unassailable* and the claims of all claimants may be liquidated exactly the same as in a proper class suit."

"It, therefore, follows that as a matter of wise discretion, as well as of recognizing a right which the railway express possessed absolutely, the court should, after the counter-claim was filed, have proceeded as provided for in the interpleader statute."

A bill in the nature of interpleader is sufficient to vest jurisdiction. *Texas v. Florida,* 306 U. S. 398, 83 L. Ed. 817 (1939); *Hunter v. Federal Life Ins. Co.,* 111 F. 2d 551 (1940). A defense was raised of no proper interpleader, but the Court stated:

(Page 555):

"It would serve no useful purpose to discuss the sufficiency of the averments of the bill as a strict bill of interpleader, since it was clearly sufficient as a bill in the nature of interpleader, which may be maintained by one who is not a mere stakeholder." (Citing Cases.)

It is not necessary that all of the claimants even have a valid claim to the property which is the subject matter of the interpleader or of the bill in the nature of interpleader.

In *Harris v. Traveler's Insurance Co.,* 40 Fed. Supp 154 (1941), in denying a motion to dismiss for lack of conflicting claims, the Court stated:

(Page 157):

"It thus becomes clear that the jurisdiction of this court to entertain an interpleader bill does not depend

on the validity or even bona fides of the claims of the respective defendants. It is obvious that in almost any case the claim of one of the parties will ultimately be determined to be invalid, that, however, it is a matter for determination at the trial and cannot affect the jurisdiction of the court."

In *Hunter v. Federal Life Insurance Co.,* 111 F. 2d 551 (1940), the Court states:

(Page 556):

"The jurisdiction of a Federal court to entertain a bill of interpleader is not dependent upon the merits of the claims of the defendants."

In *Mallers v. Equitable Life,* 87 F. 2d 233 (1936), the contention that lack of diversity of citizenship prevented interpleader jurisdiction was denied. The Court, in affirming, stated:

(Page 235):

"The institution of this *interpleader* suit by the insurance company *has made the Federal District Court the forum wherein the controversies must be determined* . . ." (Emphasis added.)

Removal of appellant Ammann, as conservator, could have no effect on the interpleader jurisdiction of the U. S. District Court or otherwise, because as stated in *Mallers v. Equitable Life* (*supra*):

(Page 235):

"Subsequent disposition of some of the issues by the court before judgment cannot oust the Federal Court of jurisdiction any more than a change of residence of one or more of the parties after suit is begun in the Federal Court may accomplish such a result. . . ."

Interpleader jurisdiction is not dependent upon diversity of citizenship between the claimants. In *Security Bank v. Walsh,* 91 F. 2d 481 (C. C. A. 9, 1937), all claimants were citizens of California, yet the Court of Appeals reversed the trial court for denying interpleader and remanded the case for further proceedings.

In *Hunter v. Federal Life Ins. Co.* (*supra*), all claimants were citizens of Arkansas. In *Mallers v. Equitable Life* (*supra*), all claimants were citizens of Illinois. In *Maryland Casualty Co. v. Glassell-Taylor,* 156 F. 2d 519 (1946); *Trienies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940); *Railway Express Co. v. Jones,* 106 F. 2d 341 (1939); *Pure Oil Co. v. Ross,* 170 F. 2d 651 (1948) and *U. S. v. Sentinel Insurance,* 178 F. 2d 217 (1949), the claimants were citizens of various states.

In *Rossetti v. Hill,* 162 F. 2d 892 (C. C. A. 9, 1947), this Court stated:

(Page 892):

> "It seems clear that the reason for interpleader is not negatived by the fact that the claimants to the fund all reside in the same state. The *usefulness* of the proceeding is in the protection of the party against conflicting claims . . . *The controversy is settled by the sensible process of bringing all parties into one court proceeding.* . . ." (Emphasis added.)

Interpleader jurisdiction of a District Court having once been properly assumed it is absolue and its jurisdiction is exclusive and nation-wide, *Railway Express Agency Inc. v. Jones* (*supra*); *Cramer v. Phoenix Mutual Life Insurance Co.,* 91 F. 2d 141 (1937), Certiorari denied: 302 U. S. 649, 28 U. S. C. 2361 (former Sec. 41(26)).

In *Publicity, etc. v. Collector of Internal Revenue,* 139 F. 2d 583 (1943), the court said:

(Page 587):

> "We consider it important that the usefulness of the statutory remedy of interpleader which has been greatly liberalized by the interpleader act of 1936 and by Rule 22 of the F. R. C. P. shall not be impaired by narrow and restrictive rulings." (Emphasis added.)

In addition to its jurisdiction under the original complaint (28 U. S. C. 1655, former 118) upon the filing of the first cross-claim-in-interpleader, ITS JURISDICTION IN INTERPLEADER BECAME "UNASSAILABLE" AND THE U. S. DISTRICT COURT AT LOS ANGELES BECAME THE "FORUM WHEREIN THE CONTROVERSIES MUST BE DETERMINED."

C. Sovereign's Immunity to Suit Is Not Here Involved.

The doctrine of sovereign immunity to suit is not here involved, as the United States has not been made a party to this litigation.

Citizens may sue officers of the United States to recover their property wrongfully detained by such officers without thereby suing the sovereign or infringing upon the sovereign's immunity from unconsented suit. This doctrine is particularly applicable when the transactions are tinged with fraud, as is here alleged.

U. S. v. Lee, 106 U. S. 196, 27 L. Ed. 171 (1882), was an action in ejectment to recover possesion of a tract of land from defendants who, acting under orders of the President, had taken possession under a tax deed to the

Uniter States, and converted part into a fort and part into a cemetery. The assertion by the defendant officers that they had acted for the United States did not foreclose judicial inquiry. Judgment was for plaintiff ejecting the defendant officers.

In *Land v. Dollar,* 330 U. S. 731, 91 L. Ed. 1209 (1947), plaintiff sued the members of the U. S. Maritime Commission to recover pledged Dollar Steamship Co. stock, claiming the debt had been paid. The defendants claimed title on behalf of the United States. The Maritime Commission members there, like the members of the Home Loan Bank Board and trustees of the Federal Savings and Loan Insurance Corporation are doing here, claimed that they were Government officials, immune from suit regardless of the merits of their defense.

The U. S. Supreme Court, in holding that the action be tried on the merits, said:

(Page 737):

> "Where the right to possession or enjoyment of property under general law is in issue, and the defendants claim as officers or agents of the sovereign, the rule of U. S. v. Lee, 106 U. S. 196; 27 L. Ed. 171, 1 Sup. Ct. 240, *supra,* has been repeatedly approved (Citing a long list of cases) . . ."

(Page 738):

> "The dominent interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld." "It is in the latter category that the pleading here casts this case."

Retrial resulted in judgment for the defendant officials, but the appellate court directed judgment for the plaintiffs, stating:

> "Any other conclusion, if the transaction were between private parties, would be wholly untenable in our opinion. We do not see why the transaction should have a different essential nature merely because a Government agency was a party."
>
> "The judgment of the District Court is reversed and the case remanded for entry of judgment in accordance with this opinion." *Dollar v. Land* (No. 10299), (C. C. A., D. C., July 17, 1950, 78 Wash. L. Rep. 1336).

Where suit is for recovery of property wrongfully held by Government agents, the United States is not a necessary party and property is recoverable from *any* agency withholding possession wrongfully. *Sawyer v. Dollar* (No. 10876, January 31, 1951, C. C. A., D. C.) Petition by Secretary of Commerce to U. S. Supreme Court is pending.

D. No Indispensible Parties—In Rem.

There can be no indispensible parties to an action *in rem* involving possession and title to real and personal property situated within the territorial jurisdiction of the U. S. District Court.

The non-resident "Washington Appellants" cannot deprive the local U. S. District Court of jurisdiction over property within its territorial jurisdiction by claiming immunity for the frauds committed pursuant to the direction, within the Court's jurisdiction.

The seizure of the solvent Los Angeles Bank on March 29, 1946, with its $46,000,000.00 of assets, including $1,900,000.00 of reserves, surplus and undivided profits and the seizure of the solvent Long Beach Association, on May 20, 1946, with its $26,000,000.00 of assets, including $1,300,000.00 of reserves, surplus and undivided profits, all occurred within the territorial jurisdiction of the U. S. District Court at Los Angeles. All of the property sought to be recovered in these proceedings is yet physically within the jurisdiction of the U. S. District Court, The Restoration Order of the U. S. District Court, made January 23, 1948, removing the conservator and ordering the restoration of all of the property of the Long Beach Association and directing that a "full and complete" accounting therefor be made, was directed to, and expended itself upon, the properties within California and persons who have been served within the jurisdiction of the U. S. District Court, that is, upon defendants Ammann, Bramley, the Federal Home Loan Bank of San Francisco and/or Portland, the Home Insurance Company, bondsmen for the appellant, Ammann, *et ux.*

Similarly judgments, (1) declaring Orders No. 5082-3-4 and 5254 unlawfully issued and void, (2) reactivating the Los Angeles Bank, (3) restoring their respective assets to the Los Angeles Bank and to the Long Beach Association, (4) quieting title thereto, (5) requiring the San Francisco Bank and Ammann to respectively account therefor, (6) surcharging their accounts, if need be, (7) and requiring repayment of deficiencies by their respective bondsmen and indemnitors (*i. e.,* the defendants, Home Insurance Company and Federal Savings and Loan Insurance Corporation, both "sue and be sued" corporations, doing business in California) are all judgments which ex-

pend themselves upon properties within California and are directed to persons in, and corporations doing business in, California.

Colorado v. Toll, 268 U. S. 228. 69 L. Ed. 927 (1925), held the Secretary of the Interior was not an indispensable party in an action to set aside his regulations as to speed limits in a National Park located in the State of Colorado. The U. S. Supreme Court reversed the U. S. District Court for dismissing the action for lack of the so called indispensable Secretary of the Interior.

The U. S. Supreme Court suggested that the Secretary of the Interior would have been a desirable party, but that he was neither a necessary nor an indispensable party. In this litigation, the Home Loan Bank Board, The Federal Savings and Loan Insurance Corporation, Divers, Adams and LaRoque, members and trustees thereof, Fahey, former Commissioner and sole trustee, and others, are desirable parties to this action, and, therefore, have been served with summons and pleadings, pursuant to appropriate Court orders, inviting them to come into the local U. S. District Court and assert their claims, if any they cared to make.

But, this invitation does not thereby make them either necessary or indispensable parties.

The U. S. District Court at all times has been open to the appellants, and all of them, to present any claims, charges or counter-charges they might care to make, but the "Washington Appellants" have not availed themselves of this opportunity to have the matter tried on the merits [Finding 47, R. 8263-5].

In *Williams v. Fanning,* 332 U. S. 490, 92 L. Ed. 95 (1947), the Postmaster General, after a hearing held in

Washington, D. C., ordered the Postmaster at Los Angeles to stamp "fraudulent" on money orders sent the plaintiff, and to return them.

(Page 492):

> "Petitioners thereupon brought this suit in the District Court for the Southern District of California, to enjoin respondent from carrying out the order, claiming that they had been deprived of the hearing to which they were entitled and that the fraud order was without the support of substantial evidence. On Motion of the respondent, the District Court dismissed the complaint holding in accord with the view of the Ninth Circuit Court of Appeals, that the Postmaster General was an indispensable party. The Circuit Court of appeals affirmed . . . 158 F. (2d) 95."

The U. S. Supreme Court, in reversing and remanding for trial, said

(Page 494):

> "The decree in order to be effective, need not require the Postmaster General to do a single thing—he need not be required to take new action, either directly, as in the Smith and Fall Cases, or indirectly through his subordinates, as in the Ritter case. No concurrence on his part is necessary to make lawful payment of the money orders and release of the mail, unstamped. Yet that is all the Court is asked to command. Reversed."

Judge Hall, in granting this preliminary injunction and refusing to dismiss the action, acted in obedience to the rulings of the U. S. Supreme Court, not only in *Williams v. Fanning* (*supra*), but also in compliance with the remand in this case of *Mallonee v. Fahey* (*supra*).

Clearly, if the U. S. District Court has jurisdiction to order payment of money orders and delivery of mail by the local Postmaster, contrary to the express orders of the Postmaster General in Washington, D. C.,—3000 miles away—the same U. S. District Court has jurisdiction over the approximately $14,000,000.00 in its own Registry.

Hynes v. Grimes Packing Co., 337 U. S. 86, 93 L. Ed. 1231 (1949), held the Secretary of the Interior was not an indispensable party in an action to enjoin enforcement of his order which, in effect, deprived the plaintiffs of the right to catch salmon in certain waters in Alaska.

In affirming the decision of this 9th Circuit Court of Appeals the State Supreme Court said:

(Page 96):

> "(a) At the outset, the United States contends that the Secretary of the Interior is an indispensable party who must be joined as a party defendant in order to give the District Court jurisdiction of this suit. In Williams v. Fanning, 332 U. S. 490, 92 L. Ed. 95, 68 S. Ct. 188, the test of whether a superior official can be dispensed with as a party was stated to be whether the 'decree which is entered will effectively grant the relief desired by expending itself on the subordinate official who is before the court', P. 494. Such is the precise situation here. Nothing is required of the Secretary; he does not have to perform any acts, either directly or indirectly. Respondents merely seek an injunction restraining petitioner from interfering with their fishing."

In this appeal these appellees seek only that thus Preliminary Injunction be upheld to restrain the appellants

from interfering with the U. S. District Court's trial of the issues on the merits.

In *Hynes v. Grimes Packing Co. (supra)* the Court stated:

(Page 126):

> "These are questions of public policy which equity is alert to protect. This court is far removed from the locality and cannot have the understanding of the practical difficulties involved in the conflicts of interest that is possessed by the district court. . . ."

(Page 127):

> "Unless steps are taken in this proceeding, the District Court, on the expiration of thirty days, shall enter a decree enjoining the defendant, Hynes, and all acting in concert with him substantially as ordered in permanent injunction entered November 6, 1946. . . ."

(Page 127):

> *"Pending the entering of further orders by the District Court, the preliminary injunction entered July 18, 1946 shall apply to protect the rights of the respondents."* (Emphasis added.)

In *Varney v. Warehime,* 147 F. 2d 238 (1945), certiorari denied 325 U. S. 882, the Court points out:

(Page 242):

> "Matters of convenience and necessity are entitled to consideration. Citizens should not be compelled to seek a distant forum for litigation of their controversies with the Government and, likewise, public officials should not be compelled to neglect their duties

to answer charges of usurpation of power in a distant forum."

"The right of intervention is available to a superior official in any suit where his subordinant is made a party defendant. Governmental regulations under present circumstances are so wide spread and affect such a vast number of our people that those who in good faith believe a public official is proceeding beyond his jurisdiction should be permitted to litigate the question, if the officer before the court is such an agent in the matter involved that it is reasonable to proceed to an adjudication of the issues with finality."

The "Washington Appellants," defendants, seek to hold a hearing before themselves, in Washington, D. C., to appoint themselves receivers of the California property of these shareholders and to thereby liquidate this litigation against themselves and their subsidiary, the San Francisco Bank.

The California owners (these 16,000 shareholder members of the Long Beach Association) would have to travel 3,000 miles to Washington, D. C., to seek to intervene in a hearing involving their property. Whether they would be permitted to intervene would be dependent upon the whim of the accused appellants, the Home Loan Bank Board, presiding at such a mock trial.

The language in *Varney v. Warchime (supra)* and of the U. S. Supreme Court in *Hynes v. Grimes Packing Co.,* 337 U. S. 86 at 126, 93 L. Ed. 1231 (1949), is particularly applicable to this litigation which involves the titles to the Southern California homes of some 8,000 borrowers. U. S. District Judge Hall has now become familiar with this complex litigation as the result of more than 100 hear-

ings requiring his consideration during nearly five years. Numerous other cases come to the same conclusion, that such distant superior public officials are not indispensable parties to actions *quasi in rem* adjudicating matters of local import such as the instant litigation.

In *Jaeger v. Simrany,* 180 F. 2d 650 (C. C. A. 9, 1950), the Immigration Commissioner was not indispensable to enjoin an Administrative hearing to cancel a certificate of lawful entry of an alien.

The local U. S. District Court cannot be deprived of its jurisdiction over property within its district merely by the fact that the "master minds" who directed the fraudulent conspiracy to seize such local property have evaded the jurisdiction of the Court by remaining outside its territorial boundaries.

The long arm of equity in *"in rem"* and "interpleader" actions cannot be so fraudulently foreshortened.

E. Jurisdiction for Judicial Review of Administrative Orders.

The U. S. District Court has jurisdiction to judicially review Administrative Agency Acts and Orders, including, among others, the four seizure Orders, Nos. 5082-3-4, and 5254, and the Restoration Order No. 388. These were all five final, judicially reviewable Administrative Orders. Federal Home Loan Bank Administration seizure Orders, Nos. 5082-3-4 of March 29, 1946, and No. 5254 of May 20, 1946, were judicially reviewable upon three grounds:

First: As an incident of the Quiet Title action to determine the validity of the appellants' claim of color of

title as a defense to justify their having exercised the incidents of ownership over California property of the plaintiffs.

Second: Under the Administrative Procedure Act (5 U. S. C. 1009, etc.) which specifically provides for judicial review of acts of Administrative agencies, such as these.

Third: The inherent power of courts to judicially review Administrative Orders which violate personal rights.

1. This action to replevin and quiet title to property in California gives the U. S. District Court jurisdiction. The appellants submitted, as their sole muniments of color of title to the California property over which they exercised the incidents of ownership, said Orders Nos. 5082-3-4 and 5254. The validity of said Orders is thereby drawn into issue, and they thus become subject to judicial review as an incident to the determination of title to California property, the *res* in this litigation.

The appellants have thereby submitted to the jurisdiction of the U. S. District Court at Los Angeles.

The appellants, Bank of San Francisco, Ammann, Bramley and others, have exercised the incidents of ownership over the assets and properties admittedly owned by the Bank of Los Angeles prior to March 29, 1946, and those admittedly owned by the Long Beach Association prior to May 20, 1946. They have held possession, sold, conveyed, transferred, pledged, released, used, driven, spent and generally dealt with, as an owner would, the cash, bonds, stocks, notes, collateral, trust deeds, securities, furniture, automobiles, equipment and real and personal property of the Bank of Los Angeles and the Long Beach Association, respectively.

The only muniments of even color of title or possible conveyances to these appellants of the incidents of ownership exercised by them over these California properties, are contained, if at all, in the said four seizure Orders of the Federal Home Loan, Bank Administration. The three Orders dated March 29, 1946 (Nos. 5082-3-4) are the only possible basis of, or appellants claim to, the right of possession, use or title of the properties admittedly then owned by the Bank of Los Angeles. The Order dated May 20, 1946 (No. 5254) is, likewise, the only possible basis of appellants' claim to the right of possession, use or title, or right to exercise any of the incidents of ownership over the property admittedly then owned by the Long Beach Association.

They purport to be final conveyances and the appellants treated them as final conveyances. They immediately forthwith used and exercised the various incidents of ownership. They sold bonds, conveyed securities, assigned notes and trust deeds, paid over monies ($7,300,000.00 of the Bank of Los Angeles' money paid by the Bank of San Francisco to Ammann), pledged, and accepted the pledge of notes and trust deeds ($12,000,000.00 of notes and trust deeds of the Long Beach Association assigned by Ammann and admittedly accepted as pledge by Bank of San Francisco).

2. The Administrative Procedure Act (Section 10) provides for judicial review of final acts of Administrative agencies (5 U. S. C. 1009). Federal Home Loan Bank Administrative Orders Nos. 5082-3-4 and 5254 were final Agency Orders and were treated and acted upon as final by all of the appellants.

These were not "preliminary, procedural or intermediate Agency" acts or rulings. The Federal Home Loan

Bank Administration did not provide by Rule or otherwise that these Orders, or any of them, were to be inoperative pending an appeal to any superior agency, authority or Court. No such appeal was, or is, provided. Said four seizure Orders were self-executing Orders representing "final Agency action for which there is no other adequate remedy in any court" other than the U. S. District Court at Los Angeles.

The Administrative Procedure Act (5 U. S. C. 1009) specifically provides (Sec. 10):

> "(c) **Reviewable Acts:** Every agency action made reviewable by statute and **every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.** Any preliminary, procedural or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, AGENCY ACTION OTHERWISE FINAL SHALL BE FINAL FOR THE PURPOSES OF THIS SUBSECTION WHETHER OR NOT THERE HAS BEEN PRESENTED OR DETERMINED ANY APPLICATION FOR DECLARATORY ORDER, FOR ANY FORM OF RECONSIDERATION, OR (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) FOR AN APPEAL TO SUPERIOR AGENCY AUTHORITY."

Orders Nos. 5082-3-4 and No. 5424 were judicially reviewable final agency acts, within the purview of Section 10(c) of the Administrative Procedure Act (5 U. S. C. 1009c). All Administrative remedies of this appellee-plaintiff have been exhausted as to these Orders. No Administration remedy was afforded the Shareholders of

the Long Beach Association or the Stockholders of the Bank of Los Angeles.

These Shareholders, deprived by said four Orders of their right of possession and of their right to exercise the incidents of ownership over their own California properties, suffered legal wrong, and have been adversely affected by final agency action. The Bank of Los Angeles, in which the class of Shareholders represented by this appellee, were stockholders, was also arbitrarily, capriciously and fraudulently purportedly dissolved without notice, hearing or cause and without the consent of its voting stockholders.

The Administrative Procedure Act (5 U. S. C. 1009a) specifically provides (Sec. 10):

> "(a) Right to review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."

The plaintiffs are persons entitled to judicial review of said four final Orders.

These actions are for declaratory relief, replevin and to quiet title to properties all located in California [R. 2960]. The acts of seizure occurred in Southern California, the owners from whom the properties were seized are residents of California, the persons (Bank of San Francisco, etc.) in whose possession the property now is are all in California.

These actions are local in character and *in rem* in nature.

The Administrative Procedure Act (5 U. S. C. 1009) provides (Sec. 10):

> "(b) Form and Venue of Action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute, or in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction."

In *United States v. State of Idaho,* 298 U. S. 105 at 110; 80 L. Ed. 1070 (1936), the Supreme Court in considering the phrase "any court of competent jurisdiction" contained in Paragraph 20 of Section 1 of the Interstate Commerce Act, held that the U. S. District Court in Idaho had jurisdiction to judicially review and set aside an Administrative Order of the I. C. C.

In *Wong Yang Sung v. McGrath,* 339 U. S. 33; 94 L. Ed. 617 (1950), reversing the dismissal of a writ of habeas corpus of an alien ordered deported, and commenting upon the purpose of the Administrative Procedure Act, the U. S. Supreme Court stated (p. 41):

> "More fundamental, however, was the purpose to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge."

The U. S. District Court, in which these local *in rem* actions have been pending for nearly five years, is a court of competent jurisdiction and is the proper venue in which

to judicially review the final acts and Orders of the appellants.

The relief demanded by the plaintiffs is within the scope of review and can be granted by a reviewing court of competent jurisdiction. The pleadings seek:

> "To cancel the fraudulent and void appointment of conservator, to quiet title, for return of property, declaratory relief, accounting and injunction." [R. 2960.]

The appellants seized and held such California property solely under muniments of color of title or right, if any, contained in the four Orders Nos. 5082-3-4 and 5254.

The complaints of plaintiffs, and the cross-complaints of the Long Beach Association and others, attack these four Orders and claim, in substance, that they are individually and collectively void *ab initio,* as having been arbitrarily, fraudulently and/or unlawfully issued [R. 2, 287, 323, 564, 2960, 3188, 6736, 6798, 6850, 9466].

The Administrative Procedure Act (5 U. S. C. 1009) provides (Sec. 10):

> "(e) SCOPE OF REVIEW:—So far as necessary to decision and where presented *the reviewing court shall* decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in ac-

cordance with law; (2) contrary to constitutional right, power, privilege or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law (5) unsupported by substantial evidence. . . ." (Emphasis added.)

Under (B) of Section 10(e) above, the U. S. District Court may find that any, or all, of said Orders Nos. 5082-3-4 and/or No. 5254, unlawful and set aside the agency action, upon any one or more of the various grounds listed in the section.

Under (A) of Section 10(e), the U. S. District Court might compel the agency to restore Districts 11 and 12 and reactivate the Federal Home Loan Bank of Los Angeles, which action has been so "unlawfully withheld and unreasonably delayed" for nearly five years, since July 25, 1946, when, after full investigation, the "Smith Committee" of Congress recommended:

"(1) That the commissioner revoke the Order reducing the number of districts from 12 to 11 in the Federal Home Loan Bank System."

"(2) That the commissioner take all necessary steps to re-establish a Federal Home Loan Bank at Los Angeles and a Federal Home Loan Bank of Portland and revoke the order or Orders by which the assets of these two District Banks were intermingled." [R. 9107 to 9191.]

("Tenth Intermediate Report of the Select Committee to Investigate Executive Agencies" House of Representatives, 79th Congress—2nd Session, House Report No. 2659.)

Many other acts and orders of the appellants are within the Scope of Review of the reviewing Court (Sec. 10(e) *supra*).

For example, Order No. 388 of the Board (January 17, 1948—"Rescinding" Order No. 5254) has been reviewed by the U. S. District Court to "determine the meaning or applicability of the terms of any agency action" and the Court on January 23, 1948, made its Order of Restoration of the Long Beach Association. Enforcement of this final Order is still pending before the U. S. District Court. The appellant, Ammann, has not yet filed "a full and complete accounting" satisfactory to the Court [R. 8992].

The acts and Orders of the appellants, including, among others, Orders Nos. 5082-3-4, 5424, 388 and including enjoined Order 2015, are all within the Scope of Review of the U. S. District Court.

Preliminary Injunction is proper Interim Relief to preserve the status pending conclusion of the judicial review of the acts and Orders of the Federal Home Loan Bank Board (Commissioner Fahey) and its successors.

Irreparable damage would be done by the holding of even a "mock" hearing with the announced intention of appointing a receiver for a solvent financial institution, such as is envisioned by Board Order No. 2015.

The appointment of a so-called conservator (Rescinded Order 5254) caused a $10,000,000.00 "run" in 1946. This second attempt by the appellants to, in 1950, again seize the Long Beach Association and under the *aegis* of Order No. 2015 to appoint appellants themselves "receivers" of this solvent Association, constitutes a threat of irreparable injury which it is necessary to prevent by

the affirmance of the issuance of this Preliminary Injunction.

The Administrative Procedure Act (5 U. S. C. 1009), provides (Sec. 10):

> "(d) Interim Relief: Pending judicial review any agency is authorized where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, *every reviewing court* (including every court to which a case may be taken on appeal from, or upon application for, certiorari, or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective sale of any agency action or to preserve status or rights pending conclusion of the review proceedings."

The issuance of this Preliminary Injunction postponing agency action under Order 2015 was proper to prevent irreparable injury and to preserve status and rights until the conclusion of the review proceedings still pending before the U. S. District Court.

The Procedure for Judicial Review under the Administrative Procedure Act (5 U. S. C. 1009) being remedial and procedural in character, is applicable even though its effective date was September 11, 1946, *i. e.,* subsequent to the seizure Orders of March 29, 1946, and May 20, 1946.

In *Pittsburg S. S. v. National Labor Relations Board,* 180 F. 2d 731 (1950) (Certiorari granted 339 U. S. 951

—pending), the effect upon a prior Order of the National Labor Relations Board of the Administrative Procedure Act was under specific consideration by direction of the U. S. Supreme Court in a previous appeal of the same case, 337 U. S. 656 at 661; 93 L. Ed. 1607 (1949). In holding the Administrative Procedure Act applicable for review of the prior Board Order, which the Circuit Court of Appeals declined to enforce, it said:

(Page 733):

". . . A remedial provision is applicable to pending actions. *Ex Parte* Collet, 337 U. S. 55, 69 S. Ct. 944, 959. In accordance with this rule since the decision of the Board preceded the enactment, the Administrative Procedure Act and the Taft-Hartley Act were applicable to the judicial review."

"The Board concedes that the review in this court is controlled by the two statutes, but contends that the scope of judicial review as to findings of fact has in no way been affected by them. We think this contention is erroneous. The provisions of Sec. 10(e) of the Administrative Procedure Act that the reviewing court shall hold unlawful and set aside agency action, findings and conclusions found to be 'unsupported by substantial evidence' and that in making this determination the court shall 'review the whole record', is new. Moreover, the rules concerning evidence have been expressly changed by both the Taft-Hartley Act and the Administrative Procedure Act. . . ." (Emphasis added.)

3. THE INHERENT RIGHT OF COURTS TO JUDICIALLY REVIEW ADMINISTRATIVE ORDERS WHICH VIOLATED PERSONAL RIGHTS existed even before the Administrative Procedure Act.

In *Fahey v. Mallonee,* 332 U. S. 245 (this case) the U. S. Supreme Court stated:

> "Nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution there are no remedies."

The U. S. Supreme Court recognized the right to judicial review in this case by referring to both the Administrative Procedure Act and to the cases of *Stark v. Wickard,* 321 U. S. 288, 88 L. Ed. 733 (1943) and *Federal Reserve System v. Agnew,* 329 U. S. 441, 91 L. Ed. 408 (1947), both of which upheld the right to judicial review before the Administrative Procedure Act was adopted.

In *Federal Reserve System v. Agnew* (*supra*) the U. S. Supreme Court held that the:

(Page 444):

> "claim to the office of director is such a personal one as to warrant judicial consideration of the controversy."

The Board and appellants there, as they do here, relied upon the case of *Adams v. Nagel,* 303 U. S. 532, 82 L. Ed. 1001 (1937), but the Court, after mentioning it, declined to follow it, stating:

(Page 444):

> "A majority of the court, however, is of the opinion that the determination of the extent of the au-

thority granted the Board to issue removal orders under Paragraph 30 of the Act is subject to judicial review and that the District Court is authorized to enjoin the removal if the Board transcends its bounds and acts beyond the limits of its statutory grant of authority."

The right to exercise the incidents of ownership over one's own property, here claimed by this appellee, the shareholder owners of the Long Beach Association, would appear to warrant judicial consideration as much, if not more, than the right to office of a director.

Irrespective of the applicability of the Administrative Procedure Act the right of judicial review of arbitrary, unlawful acts of Administrative Agencies is a judicial function entrusted to the courts by their creation by Congress. It is a power inherent in courts. (*Federal Reserve System v. Agnew,* 329 U. S. 441, 91 L. Ed. 408 (1947); *Stark v. Wickart,* 321 U. S. 288, 88 L. Ed. 733 (1943); *Columbia Broadcasting System v. U. S.,* 316 U. S. 407, 86 L. Ed. 1564 (1942); *U. S. v. Morgan,* 307 U. S. 183, 83 L. Ed. 1211 (1938).)

The U. S. District Court has jurisdiction to judicially review Federal Home Loan Bank Administration Orders Nos. 5082-3-4 and No. 5254, and the subsequent Home Loan Bank Board Orders Nos. 388, 2015, and others:

1. As muniments of color of title to be reviewed in an action to quiet title to California property.
2. Under the Administrative Procedure Act, and
3. Under the inherent power of courts to judicially review Administrative Acts.

II.

THE LAW OF THE CASE HAS ESTABLISHED JURISDICTION.

It is the Law of this Case that the U. S. District Court at Los Angeles has jurisdiction of the subject matter and of the parties and this is now *res adjudicata.*

A. THE U. S. SUPREME COURT HAS TWICE RECOGNIZED THAT U. S. DISTRICT COURT HAS JURISDICTION.

First: When it refused to dismiss as requested by these appellants (App. Br. S. Ct. p. 100),[4] but instead remanded the case to the U. S. District Court at Los Angeles:

> "Without prejudice to any other administrative or judicial proceedings which may be warranted by law. The judgment is reversed."

Fahey v. Mallonee, 332 U. S. 245, 91 L. Ed. 2030, 67 S. Ct. 1552 (1947). The Supreme Court indicated that the case should be tried on the merits, stating:

(Page 257):

> "It is obvious that there is more to this litigation than meets the eye on the pleadings. The plaintiffs' charges that ill will and malice actuated the supervising authorities, as well as the charges of the defendant that the institution has been mismanaged and that the management is unfit, are alike undetermined by the courts below, and we make no determination or intimation concerning the merits of these issues or as

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[4]App. Br. S. Ct. refers to these appellants' brief to the U. S. Supreme Court, *Fahey, et al. v. Mallonee, et al.* (No. 687), 332 U. S. 245, 91 L. Ed. 2030 (1947).

to other remedies or relief than that in the judgment before us."

SECOND: When it denied these appellants leave to file a petition for Writ of Mandamus and/or Prohibition and/or Injunction to prevent the payment of expenses and attorneys' fees. These appellants there sought to:

(Page 259):

". . . Vacate his Order allowing fees to counsel in Fahey v. Mallonee, 332 U. S. 245, 67 S. Ct. 1551, to prohibit any further allowance therein and to enjoin any payments heretofore allowed." *Ex parte Fahey et al.,* 332 U. S. 258 (1947), 67 S. Ct. 1558.

Justice Jackson, in the opinion denying permission to file petition for Writ, stated:

(Page 260):

"We find nothing in this case to warrant their use. An allowance of $50,000.00 will hardly destroy a $26,000,000.00 association during the time it would take to prosecute an appeal. The status of one of the applicants in the principal case is now settled so that he has standing to take all authorized appeals. We hold that the applicants' grievance is one to be pursued by appeal at the proper time and in the appropriate court, rather than by resort to our original jurisdiction for extraordinary writs. The petition is denied." *Ex parte Fahey,* 332 U. S. 258 at 260, 91 L. Ed. 2041 (1947).

Petitions for writs historically and primarily attack and put in issue the jurisdiction of the trial court. Certainly had there been any question as to the jurisdiction of the U. S. District Court, the U. S. Supreme Court would

not have indicated that $50,000.00 should be paid to the plaintiff's attorneys before trial from monies interplead in the Registry of the Court.

B. THIS CIRCUIT COURT OF APPEALS HAS LIKEWISE RECOGNIZED THAT THE U. S. DISTRICT COURT HAS JURISDICTION of the persons and subject matter involved in this litigation, thereby following the precedent of the U. S. Supreme Court.

On December 5, 1947, this Circuit Court of Appeals after argument, denied these appellants' motion for a supersedeas to stay the payment of an Order for attorneys' fees, pending an appeal (No. 11751) which was later dismissed, on February 6, 1948.

On June 1, 1950, this Honorable Court of Appeals for the Ninth Circuit denied these same appellants:

> "Leave to file petition for writ of prohibition, mandamus, or other appropriate relief and for rule to show cause."

The Bank of San Francisco and the United States presented separate petitions, but both made the same, worn out attack upon the jurisdiction of the U. S. District Court.

On September 5, 1950, this Circuit Court of Appeals, after argument, again denied these appellants' "motions for a stay of payment of attorneys' fees", pending appeal No. 12591. Again, these appellants urged that the "District Court lacks jurisdiction over said consolidated actions and each one thereof. . . ." (Appellants' Motion for Stay of Execution, etc., p. 8, Appeal No. 12591—C. C. A. 9).

The denial by the U. S. Supreme Court and by this U. S. Circuit Court of Appeals of the appellants' repeated applications for Writs and the denial by this U. S. Circuit Court of Appeals of the two motions of these appellants for "Stay of payment of attorneys' fees" pending appeals Nos. 11751 and No. 12591 *"A fortiori"* are, in effect, findings by both the U. S. Supreme Court and by this Circuit Court of Appeals that the U. S. District Court has jurisdiction.

The Law in this case is established by appellate decisions herein that the U. S. District Court at Los Angeles has jurisdiction.

C. MANY PRIOR, FINAL JUDGMENTS, HAVE ESTABLISHED THE LAW OF THIS CASE TO BE THAT THE U. S. DISTRICT COURT HAS JURISDICTION OF THE SUBJECT MATTER AND THE PARTIES. In the more than 100 hearings in this litigation during the past nearly five years, the U. S. District Court has made many final appealable findings of fact, conclusions of law, Orders and judgments. Many of these final judgments have been recognized and accepted as final by these same appellants, by their compliance therewith.

Likewise, many of these orders and judgments have become final in law by either appeals dismissed, or by failure to appeal.

In these judgments the jurisdiction of the court over the subject matter and the parties has either been specifically found or is implied as inherent in all judgments.

(Page 171):

> "Every Court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the par-

ties and the subject matter." *Stoll v. Gottlieb,* 205 U. S. 165, 83 L. Ed. 104 (1938); *Walling v. Miller,* 138 F. 2d 629 (1943).

Of the many final judgments and/or decrees in which the jurisdiction of said U. S. District Court has been specifically found, recognized or exercised, we will discuss only ten:

1. On September 2, 1947 the U. S. District Court filed its:

> "Findings of Fact, Conclusions of Law and Order for interim partial allowance on account of expenses and attorneys' fees incurred by the plaintiffs, the Shareholders Protective Committee, prior to March 19, 1947" [R. 2350].

It was specifically found that:

> "(2) The Court has jurisdiction of the persons and subject matter involved." [R. 2354.]

This Finding was before this Court on December 5, 1947, when it denied these appellants' application for a Stay pending appeal No. 11751, *Ammann v. Mallonee,* which was dismissed on February 6, 1948, and the case remanded to the U. S. District Court for further proceedings [R. 3550].

It is now the Law of this Case that said U. S. District Court has jurisdiction of the persons and subject matter involved. All of the parties hereto have relied and acted upon this being the Law of this case.

2. Prior to December 26, 1947 the U. S. District Court made its:

> "Order requiring deposits of notes, deeds of trust, requests for reconveyances, and money." [R. 2852.]

in approximately 50 intervention proceedings by various petitioners seeking to clear the titles to their homes located in Southern California. [Listed in Footnote R. 8288-8291.] In these interpleader and intervention matters final Orders were made by the U. S. District Court upon which the parties, the title companies and the general public have relied, to clear and make marketable the titles to approximately 480 homes of Southern California residents.

On December 26, 1947 these appellants appealed [R. 3152] from some of such orders, including:

a. Ethel A. Cameron—Order of intervention filed November 28, 1947—which ultimately resulted in clearing title to her home by the deposit in the Registry of approximately $7,300.00 [R. 2852].

b. Wrigley Heights Inc. and Wrigley Heights Second, Inc.—Orders filed November 28 and December 2, 1947, respectively, which ultimately resulted in clearing title to approximately 65 parcels of real property by the deposit in the Registry of approximately $325,000.00 [R. 2861 and 2883].

c. Clayton T. and Melba D. Hobba—Order filed December 2, 1947 which ultimately resulted in clearing title to their home by the deposit in the Registry of approximately $3,700.00 [R. 2873].

d. Owen D. and Ruby M. Fields—Order filed December 5, 1947, which ultimately resulted in clearing title to their home by the deposit in the Registry of approximately $3,500.00 [R. 2949].

Appeal No. 11867 of these appellants from the Orders of the U. S. District Court permitting the intervention of home owners to clear the titles to their Southern California

homes was finally dismissed on February 25, 1948, and remanded to the U. S. District Court for further proceedings and was spread April 19, 1948 [R. 3976].

By the dismissal of Appeal No. 11867 on February 25, 1948, the Law of this case became established that the U. S. District Court had jurisdiction to remove encumbrances and clouds from the titles to the homes of Southern California residents.

3. On January 23, 1948, the U. S. District Court entered its

> "Order that the petition of the Shareholders be granted and that the conservator for the Long Beach Federal Savings and Loan Association be removed and its assets returned to the directors and officers of the Association." [R. 3442 and 8310.]

Among other things, the Order states:

> "The Court therefore reserves full power, both under this order and under its otherwise *existing jurisdiction,* to make all necessary, expedient or proper additional or later orders or decrees or judgment." (Emphasis added.) [R. 8327.]

This order was made following the filing of Board Order No. 388 (dated January 17, 1948), pursuant to directions therein a certified copy was delivered to the U. S. District Court [R. 8310]. This constituted a confession of judgment by the appellant, Home Loan Bank Board. The specific terms of the "Order of Restoration" were approved by counsel for the "Washington Appellants" [R. 8328]. There was no appeal from this final order of restoration. The appellants have partially, but not fully, complied with the Court's Order, and have returned to the

Long Beach Federal Savings and Loan Association some, but not all, of its assets.

This "Order of Restoration" has become final, and it is now the Law of this case that the U. S. District Court has jurisdiction of the Long Beach Association and all of its assets, and of all parties retaining possession of, or claiming any right, title or interest in said Association, or its assets.

4. On March 13, 1948, the U. S. District Court at Los Angeles made its

> "Order requiring deposit of certain notes, deeds of trust, U. S. Government Bonds and other collateral held by the Federal Home Loan Bank of San Francisco" [R. 3772].

This Order with its Findings of Fact and Conclusions of Law, is attached as an exhibit to the Preliminary Injunction here now on appeal [R. 8399 to 8525].

It contains lists specifically describing the notes, deeds of trust, bonds and collateral securities required to be deposited in court [R. 8421 to 8524].

The Court specifically finds that:

> "That by custom and usage in the County of Los Angeles, State of California, policies of title insurance are required for marketable and merchantable title to real property to be sold, encumbered, or conveyed in said County and State."
>
> "That if such payment by said Long Beach Federal Savings & Loan Association of said sum be made to one of said conflicting claimants, to the exclusion of the other (Federal Home Loan Bank of San Francisco v. Federal Home Loan Bank of Los Angeles)

and the other claimant thereafter would be held to have been entitled to such payment, then the owners of the various properties under trust deeds may each be subjected to claims upon their notes and property for a portion of said total liability (now approximately $6,300,000.00) which possible liability exists as a cloud upon the title to each of the thousands of properties involved and prevents each of them from securing a merchantable and insurable title, unless the within Order is made. That the making of the within Order thus avoids the complex, multiple, and conflicting claims and demands which may be made upon the approximately 8,000 individual borrowers of said association." (Inserts and emphasis added.)

"That all of the assets and properties, herein described, notes, deeds of trust, U. S. Government Bonds, and other collateral are physically within the confines and boundaries of the Southern District of California and *thus physically within the jurisdiction of this court.* . . ." [R. 8412.]

". . . The court therefore reserves full power, both under this order and the order to show cause and the Motion which brought this proceeding to this hearing and also under its *otherwise existing jurisdiction* to make all necessary expedient or proper, or later, Orders, decrees or judgments." (Emphasis added.) [R. 8524.]

The appellants, San Francisco Bank, complied with said Order without appeal, and deposited in the Registry of the U. S. District Court bonds, notes, deeds of trust and collateral securities [R. 3775, etc.] amounting to approximately $14,000,000.00; yet now, three and one-half years later, appellants urge that the U. S. District Court was without jurisdiction.

This was an appealable order in Interpleader, which has become final, and the Findings of Fact and Conclusions of Law that the U. S. District Court has jurisdiction of the properties interplead and the parties claiming any interest therein are now the law of this case and *res adjudicata.*

The following six final Orders were made subsequent to March 19, 1948, the effective date of the amendment to 54(b) F. R. C. P.

5. On March 26, 1948, the U. S. District Court entered its:

> "Order for delivery of notes and trust deeds (excess collateral) from Clerk of Court to Long Beach Federal Savings and Loan Association" [R. 3869 and 8526].

The Court specifically found it had jurisdiction:

> "The Court, therefore, reserves full power both under this Order and under the Order dated March 13, 1948, and the Order to Show Cause and Motions which brought proceedings to hearing and also under its *otherwise existing jurisdiction* to make all necessary, expedient, or proper additional, or later, Orders, decrees or judgments." (Emphasis added.) [R. 8535.]

Pursuant to this final Order, which was not appealed, the Clerk of the U. S. District Court released to the Long Beach Association several millions of dollars of excess collateral which since has been dealt with, transferred, conveyed and released to the general public, hence, it would appear that this Order, likewise, was a "final disposition of a claimed right." (*Cohen v. Beneficial Industrial Loan Corporation,* 337 U. S. 541, 93 L. Ed. 1531 (1949).)

The jurisdiction of the U. S. District Court has become established as the Law of the Case and is *res adjudicata.*

6. On July 30, 1948, the U. S. District Court made its:

> "Findings of Fact, Conclusions of Law and Interlocutory Decree of Injunction."

enjoining the Northern Ten Associations (plaintiffs there) from proceeding with subsequently filed action, No. 28203-G, in the Northern District of California, which involves some of the same property, parties and issues. [R. 4722 and 8362, etc.]

The Court specifically found it had jurisdiction:

> "XI.
>
> ". . . That said proceedings, orders, activities, or other matters would interfere with the interpleader jurisdiction of this Southern District Court and would impede, harass, and obstruct the execution of its process, orders and judgment, and would expose said parties to the danger of having to litigate in two separate United States District Courts in separate districts the same matters which they have already litigated for more than two years in this Southern District Court." (Emphasis added.) [R. 8371.]

The U. S. District Court in and for the Northern District of California, Southern Division, recognized said "Interlocutory Decree of Injunction" and has suspended all proceedings in said action No. 28203-G. This was an appealable "Interlocutory Injunction" (28 U. S. C. 1292), but it was not appealed. The findings therein are now final.

7. On February 2, 1949, the U. S. District Court filed its:

> "Preliminary Injunction Enjoining Prosecution of Remanded Action and Order of Remand." [R. 5798 and 8377.]

of subsequently filed action No. L. B. C. 14492, to the Superior Court of California, which action involved some of the same properties, parties and issues [R. 8389].

The Court specifically found it had jurisdiction:

> "That the interpleader jurisdiction of this Court has been invoked by many of the parties litigating. That among such interpleaders are that of Title Service Company, involving $12,000,000.00 of notes and deeds of trust and the titles to the alleged homes of 8,000 borrowers from said Association; Robert H. Wallis involving a $50,000.00 cashiers check concerning said Association's defense; said Association itself, concerning notes, deeds of trust, United State Government Bonds, money and other securities aggregating approximately $14,000,000.00; by George Turner, defendant and cross-claimant, involving a lease of part of the land, building and premises in which said Association maintains its offices and conducts its business.
>
> "That by the various pleadings of the various parties to any or all of said interpleader proceedings, issues have been made concerning the class of 16,000 depositors, whose $22,000,000.00 in savings are represented in part by some or all of said interplead assets, money and property. That such interpleader proceedings purport to bind not only the Mallonee group of plaintiffs, as representatives of said class, but said Newendorp and Bradley likewise as members

of said class and as alleged representatives of said class.

"That it is equitable and proper that all such conflicting and contradictory claims of the litigating class plaintiffs and their derivative stockholders actions, if litigated in any court, should all be presented to, and considered by, this court having jurisdiction in interpleader in addition to all other grounds of jurisdiction." (Emphass added.) [R. 8395 and 8396.]

This was another appealable Interlocutory Injunction (28 U. S. C. 1292) which was not appealed. The Finding that the U. S. District Court has jurisdiction, as well as the other Findings therein, have become final and are now the Law of this Case and are *res adjudicata.*

It should be pointed out that the above two Interlocutory Injunctions (Nos. 6 and 7 above) were made since March 19, 1948, the date when the amendment to Rule 54, F. R. C. P. became effective. They do not contain an "express determination that there is no just reason for delay nor an express direction for the entry of judgment." Hence, appellants may argue that they are not final, appealable judgments.

This argument would, of course, apply equally to the "Preliminary Injunction with Findings," the subject of this appeal, No. 12511, as it contains no "express determination that there is no just reason for delay" nor any "express direction for the entry of judgment" as now required by Rule 54(b), F. R. C. P. This contention appears to be answered by the specific provisions of 28, U. S. C. 1292 which gives courts of appeal appellate jurisdiction of Interlcoutory Injunctions.

8. On April 1, 1949, the U. S. District Court made "Findings of Fact, Conclusions of Law and Order for Interim Allowances on Account of Expenses and Costs Allowed March 22, 1949" [R. 6427],

specifically finding:

"2. That the court has jurisdiction of the parties and subject matter involved." [R. 6436.]

The Court expressly made the order appealable and final in conformance with the provisions of the amendment to Rule 54(b), F. R. C. P., by expressly stating:

"The court hereby expressly determines that there is no just reason for delay in decision of the matters herein contained and expressly directs the entry of the judgment contained herein." [R. 6457.]

No appeal was taken from this Order and pursuant thereto the Clerk of the U. S. District Court paid to the various parties, out of the Registry of the Court, more than $37,000.00.

This Order is now final and the Findings of Fact and Conclusions therein that the Court has jurisdiction of the parties and subject matter is now the Law of the Case and *res adjudicata.*

9. On May 10, 1949, the U. S. District Court made: "Findings of Fact, Conclusions of Law and Order for Interim Allowances on Account of Attorneys' Fees incurred prior to December 15, 1948." [R. 6527.]

specifically finding:

"4. That the court has jurisdiction of the parties and subject matter involved for the purpose of this Order." [R. 6541-2.]

The Court expressly made the Order appealable and final, in compliance with the provisions of the amendment to Rule 54(b), F. R. C. P.:

> "and the Court expressly determines that there is no just reason for delay upon the matters herein contained and expressly directs and orders the entry of the judgment contained herein." [R. 6545.]

No appeal was taken and this Order is now final and the specific Findings and Conclusions of Law that the Court has jurisdiction is now the Law of this Case and *res adjudicata.*

10. On April 5, 1950, the U. S. District Court entered its:

> "Findings of Fact, Conclusions of Law and Order for Substitution of Parties Plaintiff,"

specifically finding, on page 3:

> "(3) that this court has heretofore after extended hearings by various orders, held that it has jurisdiction of the parties and subject matter of the within litigation, from certain of which orders appeals were taken by the Home Loan Bank Board and/or its agents and thereafter dismissed, and upon which order, as well as said other orders so holding, the time of appeal has passed for a considerable period." [Clk. Tr. p. 19216.]

The Court expressly made the order appealable and final as now required by Rule 54(b), F. R. C. P. This order is printed in the appendix, Exhibit D.

This order was not appealed and the Findings of Fact and Conclusions of Law therein have become final and

again unmistakably establish that it is the Law of the Case and *res adjudicata;* that the U. S. District Court has jurisdiction of the parties and subject matter of this litigation.

D. FINAL JUDGMENTS, THOUGH PARTIAL, ESTABLISH THE JURISDICTION OF THE COURT AS THE LAW OF THE CASE AND RES ADJUDICATA. THERE IS NO RIGHT TO LITIGATE THE SAME QUESTION TWICE.

For nearly five years these appellants, co-defendants standing charged with a fraudulent co-conspiracy, have repeatedly urged various and sundry dilatory pleas in abatement rather than face a trial on the merits. In the U. S. District Court, in this Ninth Circuit Court of Appeals and in the U. S. Supreme Court they have repeatedly urged lack of jurisdiction, indispensable parties, exhaustion of administrative remedies, immunity to suit and similar matters of abatement. These dilatory pleas must be disposed of before factual determination can be had on the merits. Jurisdiction of the person can be waived in many ways, such as by stipulating, by general appearance, by seeking affirmative relief, etc., all of which are here present. All such dilatory pleas once determined by the trial court become finally determined upon the final determination of the first appealable Order thereafter. The U. S. District Court, on numerous occasions, has determined all of these dilatory pleas of the defendants adversely to them. Many subsequent appealable Orders have become final.

Once a Court has determined its own jurisdiction by a final judgment, partial or otherwise, the losing parties

cannot thereafter again attack jurisdiction, even though the decision was erroneous.

In *Dickinson v. Petroleum Conversion Corp.,* 338 U. S. 507, 70 S. Ct. 322, 94 L. Ed. 299 (1950). There were allegations of fraudulent conversions in complicated stock transfer situations. Like here, there were numerous interventions, counter claims, etc. On April 10, 1947 (prior to the amendment of 54(b), F. R. C. P.) a decree was entered adjudicating part of the controversy, this was not appealed.

Subsequently, a final decree was entered adjudicating other issues, and the appellants, there as here, attempted to again raise various issues which were within the contemplation of the prior partial final judgment. The U. S. Supreme Court held that the prior Order made before the amendment to 54(b), F. R. C. P., was a final appealable Order and that all matters therein adjudicated became the Law of the Case and *res adjudicata* and, hence, could not be again urged upon a subsequent appeal.

Cohen v. Beneficial Industrial Loan Corp., 337 U. S. 541, 93 L. Ed. 1528 (1949), was a class action by stockholders who alleged a fraudulent conspiracy. The defendants, as in the instant case, rather than meet the issue on its merits, attempted to plead, in abatement, a New York Statute which required the plaintiffs, as individuals, in the class action representing the 16,000 shareholders to post a bond of $125,000.00 for costs and expenses. The District Court declined to fix bond. The U. S. Supreme Court, in holding that the Order declining to fix bond was appealable, stated:

> "When that time comes, it will be too late effectively to review the present Order and the rights conferred

by the statute, if it is applicable, will have been lost, probably irreparably." . . .

* * * * * * * *

"We hold this Order appealable because *it is a final disposition of a claimed right* which is not the ingredient of the cause of action and does not require consideration with it."

In *Stoll v. Gottlieb,* 205 U. S. 165, 83 L. Ed. 104 (1938), the plan of reorganization in a 77(b) proceeding was confirmed by the U. S. District Court over the objection of others of the same class as the plaintiffs who did not appear at the hearing, but subsequently filed a petition for modification of the Order which had cancelled a guaranty for their benefit. Plaintiffs plea that the Court lacked jurisdiction to cancel the guaranty was denied, but not appealed, and became final. Plaintiffs then obtained a judgment on the cancelled guaranty in the State Court of Illinois. The U. S. Supreme Court held that the question of jurisdiction of the U. S. District Court had been decided by that Court, and that no appeal having been taken from such decision, right or wrong, the judgment of the District Court upon its own adjudication that it had jurisdiction, was final, and reversed the Supreme Court of Illinois, stating:

(Page 171):

"The inquiry is to be directed at the conclusiveness of the order releasing the guarantor from his obligation, assuming the bankruptcy court did not have jurisdiction of the subject matter of the order, the release in reorganization of a guarantor from his guarantee of the debtor's obligation."

* * * * * * * *

"Where adversary parties appear, a court must have the power to determine whether or not it has jurisdiction of the person of a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration. Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter."

* * * * * * * *

(Page 172):

"We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction."

The U. S. Supreme Court quotes with approval from a decision of the Supreme Court of Oregon:

(Page 175):

"But that was a question which the Circuit Court of the United States was competent to determine in the first instant. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise, than on writ of error or appeal to this court."

In *Baldwin v. Iowa Travelling Men, etc.,* 283 U. S. 522, 75 L. Ed. 1245 (1931), the U. S. Supreme Court

in declining to permit the relitigation of the subject of jurisdiction stated:

(Page 524):

> "The respondent, on the other hand, insists that to deprive it of the defense which it made in the court below, of lack of jurisdiction over it by the Missouri District Court, would be to deny the due process guaranteed by the 14th Amendment; but there is involved in the doctrine no right to litigate the same question twice. (Citing authorities.)"
>
> "The substantial matter for determination is whether the judgment amounts to res judicata, on the question of the jurisdiction of the court which rendered it over the person of the respondent. It is of no moment that the appearance was a special one expressly saving any submission to such jurisdiction. . . . The special appearance gives point to the fact that the respondent entered the Missouri Court for the very purpose of litigating the question of jurisdiction over its person. It had the election not to appear at all. . . ."

In *Dugas v. American Surety Co.,* 300 U. S. 414, 81 L. Ed. 720 (1936). Similarly, a subsequent attack on interpleader jurisdiction was denied. Similarly, in *American Surety Co. v. Baldwin,* 287 U. S. 156, 77 L. Ed. 23 (C. C. A. 9, 1932), it was held that denial of a motion to vacate was an adjudication of jurisdiction which thereby became *res adjudicata.*

Jurisdiction once finally determined becomes the Law of the Case and is *res adjudicata.*

Chicot, etc., v. Baxter State Bank, 308 U. S. 371, 84 L. Ed. 329 (1940);

Walling v. Miller, 138 F. 2d 629 (1943).

In *Trienies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (C. C. A. 9, 1940), the Supreme Court in refusing to permit relitigation of the issue of jurisdiction once decided, said:

> "One trial of an issue is enough. The principles of *res adjudicata* apply to questions of jurisdiction as well as to other issues—as well to jurisdiction of the subject matter as of the parties." (Emphasis added.)

These same appellants have litigated all possible questions of jurisdiction of the U. S. District Court at Los Angeles over the parties and the subject matter. Though repeatedly attacked, its jurisdiction has never been denied by any Appellate Court in this litigation. Appellants have lost these issues of jurisdiction in the U. S. Supreme Court, in this Honorable Court of Appeals and in the District Court at Los Angeles not once, but on repeated occasions, in 1947, 1948, 1949, 1950 and, we hope, for the last time, on this appeal in 1951.

With 20,000 pages of printed record, more than 100 Court hearings, innumerable final judgments, in nearly five years of litigation, the dilatory plea as to lack of jurisdiction should, at last, be "laid to rest" and the litigation be ordered to proceed to an adjudication on the merits.

> "It is just as important that there should be a place to end as that there should be a place to begin litigation." (*Stoll v. Gottlieb, supra.*)

It is the Law of this Case that the U. S. District Court at Los Angeles has jurisdiction of the subject matter and of the parties and the question of jurisdiction now is *res adjudicata.*

III.
PRELIMINARY INJUNCTION TO PRESERVE THE STATUS QUO.

A. Generally, the Court first acquiring jurisdiction over the property, the *res,* should exercise its jurisdiction to the exclusion of all other forums. It should issue its injunctions, if and when necessary, to restrain the parties from participating in any actions involving the same *res* in any other forum.

In *Looney v. East Texas Ry. Co.,* 247 U. S. 216, 62 L. Ed. 1084 (1918), the U. S. Supreme Court, in sustaining the enjoining of a State Attorney General in connection with I. C. C. Orders, stated (page 220):

> ". . . our conclusion is that the present status should be maintained until such time as this court may consider all of the grave questions of Law and all of the great mass of facts connected with this complicated and important litigation. . . ."

* * * * * * * *

(Page 221):

> "The use of the writ of injunction by Federal Courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties is a familiar and long established practice." (Citing authorities.)

The doctrine that the Court first acquiring jurisdiction should retain the same exclusively until it has finally de-

termined all of the issues and matters involving the *res,* is well established.

City of Orangeburg v. Southern Ry. Co., 134 F. 2d 890 (1943);

Penn. Co. v. Pennsylvania, 294 U. S. 189, 79 L. Ed. 850 (1935);

Rickey Land & Cattle Co. v. Miller & Lux, 218 U. S. 258, 54 L. Ed. 1032 (a 1910 California-Nevada Water case).

In *United States v. Union Pacific Railway Co. and Western Union Telegraph Co.,* 160 U. S. 3, 40 L. Ed. 319 (1895), the U. S. Supreme Court stated the rule of the jurisdiction of equity to give complete relief in one trial, in this language:

(Page 51):

"But a suit in equity by the United States against both companies for the purpose of annulling the agreements under which the telegraph company claims rights adverse to the United States, can embrace all the matters in controversy and authorize a comprehensive decree that will terminate all disputes among the parties as to such matters." (Citing cases.)

* * * * * * * *

(Page 52):

"We are of the opinion that the Circuit Court properly adjudged that equity had jurisdiction to give full relief in respect to all matters in issue between the United States and the defendant companies."

Courts will enjoin interference with those in possession of property under the Court's judgment and in such cases the jurisdiction of the Court may be invoked by supple-

mental proceedings. *Julian v. Central Trust Co.,* 193 U. S. 93, 48 L. Ed. 629 (1904), where the Court stated:

(Page 114):

"We are here dealing with a right and title conferred by authority of the decree of a Federal Court, which may be virtually set aside and held for naught, if the property awarded can be taken upon execution in suits to which the purchaser is not a party."

The jurisdiction of the U. S. District Court having once attached cannot be taken away, diminished or interfered with by proceedings subsequently instituted in any other forum.

Peoples Bank of Belleville v. Winslow (Calhoun interpleader), 102 U. S. 256, 26 L. Ed. 101 (1880);

Dugas v. American Surety Co., 300 U. S. 414, 81 L. Ed. 720 (1936).

U. S. District Courts in the exercise of, and to protect their jurisdiction, have power to, and should when necessary, restrain unlawful acts. *Graham v. Brotherhood of Locomotive Firemen & Enginemen,* 338 U. S. 232, 94 L. Ed. 22 (1949), restraining a union from discriminatory acts. Likewise, U. S. District Courts should, when necessary, restrain unlawful acts of Federal officers, agencies and boards. In *Jaeger v. Simray,* 180 F. 2d 650 (C. C. A. 9, 1950), an Administrative hearing of the Immigration Commissioner to cancel an alien's certificate of lawful entry, was enjoined.

Land v. Dollar, 330 U. S. 731, 91 L. Ed. 1209 (1947), approved the restraining of the U. S. Maritime Commis-

sion from selling the plaintiff's stock under a claim of ownership by the United States, which ultimately was found to be invalid and the stock ordered restored to the plaintiff. (*Dollar v. Land,* No. 10299, C. C. A. of D. C., July 17, 1950.)

City of Orangeburg v. Southern Railway Co., 134 F. 2d 890 (1943), restrained the city from foreclosing a paving assessment. In *Philadelphia Company v. Stimson,* 223 U. S. 604, 56 L. Ed. 570 (1912), Mr. Justice Hughes, in delivering the unanimous opinion of the Court, stated:

(Page 619):

> "First. If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded." (Citing cases.) "And in case of an injury threatened by his illegal action the officer cannot claim immunity from the injunctive process."

In *Hynes v. Grimes Packing Co.,* 337 U. S. 86, 93 L. Ed. 1231 (1949), endorsement of regulations of the Secretary of the Interior prohibiting salmon fishing in certain areas in Alaska was enjoined. In *Williams v. Fanning,* 332 U. S. 490, 91 L. Ed. 95 (1949), the Postmaster at Los Angeles was restrained from enforcing a fraud Order directing him to seize the plaintiff's money orders.

Nagle v. J. F. T. O'Connor, 88 F. 2d 936 (1937), reversed the District Court for denying a preliminary

injunction to restrain a conservator appointed by the Comptroller of the Currency, from exceeding his authority in levying an assessment on stockholders.

B. The injunctive Protection of Interpleader Jurisdiction is nationwide.

A court of equity having once acquired jurisdiction of an interpleader, has complete, sole and exclusive jurisdiction of the entire proceedings, and should restrain and enjoin the commencement or prosecution in any other forum of any proceedings affecting any part of the *res, Treinies v. Sunshine Mining Co.,* 308 U. S. 66 at 74, 84 L. Ed. 85 (1940). In *Fidelity and Deposit Company v. A. S. Reid and Company,* 16 F. 2d 502 at 504 (1926), and in *Ross v. International Life Ins. Co.,* 24 F. 2d 345 (1928), the parties were restrained from prosecuting State Court actions which might interfere with the interpleader jurisdiction of the Federal Courts. In *National Fruit Products Co. v. Dwinell-Wright Co.,* 129 F. 2d 848 (1942), a proceeding in the U. S. patent office was restrained. In *Security Trust and Savings Bank of San Diego v. Walsh,* 91 F. 2d 481 (C. C. A. 9, 1937), on appeal, from *Eagle Star & British Dominion v. Tadlock,* 14 Fed. Supp. 933 (D. C. Cal., 1936), the District Court was reversed for not protecting its interpleader jurisdiction by temporarily enjoining a prior filed admiralty action involving the same properties, even though all claimants were residents of California and diversity of citizenship existed only as to the stakeholder.

The Federal interpleader statutes (28 U. S. C. 2361) and Rule 22, F. R. C. P., were intended to give a court of equity, having interpleader jurisdiction, the power to require all interested parties wherever located to come in and set up their claims in one case for decision at one time, "so as to prevent it from being only a race to the swift."

Maryland Casualty Co. v. Glassell-Taylor & Robinson, 156 F. 2d 519 (1946);

Dugas v. American Surety Co., 300 U. S. 414, 81 L. Ed. 720 (1936);

Cramer v. Phoenix, etc., 91 F. 2d 141 (1937), certiorari denied 302 U. S. 649, but entry withheld.

Federal Courts are specifically empowered to issue all writs, including preliminary injunctions, which may be necessary for the exercise or protection of their general jurisdiction (28 U. S. C. 1651) and for the protection of their interpleader jurisdiction (28 U. S. C. 2361) (Former Sec. 41(26) Interpleader Rule 22, F. R. C. P.).

Injunction is a proper means of protecting the Court's general jurisdiction (*Camp v. Boyd,* 229 U. S. 529, 57 L. Ed. 1317 (1912), and its interpleader jurisdiction; *Mallers v. Equitable Life Ins. Soc.,* 87 F. 2d 233 (1936); *Treinies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940)).

The right of intervention is available to a superior official in any suit where his subordinate is made a party defendant (*Varney v. Warehime,* 147 F. 2d 238 (1945)).

The U. S. District Court at Los Angeles has at all times since the first inception of this litigation on May 27, 1946, afforded a forum open to all those claiming any interest in, or right to control over, any of the properties, associations or banks involved. The U. S. District Court specifically has recognized its own availability in Finding 35, of the present "Preliminary Injunction":

> "That the process and powers of this Court are available to said Home Loan Bank Board to protect and preserve the public interest and rights involved in, or necessarily collateral to, this litigation, and to compel the performance of any alleged unfulfilled duty of said association, or any other litigant herein, as well as to protect and preserve the assets and rights of the shareholder members and depositors and borrowers from, and other persons doing business with, said association [R. 8256]."

All parties have been invited to participate in this litigation and present their claims, whatever they may be, to the said U. S. District Court which is available and competent to enforce its adjudication as to the properties involved, all of which are within its territorial jurisdiction.

On the other hand, the proposed Administrative hearing contemplated by Home Loan Bank Board Order No. 2015 did not invite all parties who claim an interest in or to the property, nor would it have been capable of rendering an effective judgment over properties in California and persons and corporations not parties to the proposed Administrative hearing.

IV.

ADMINISTRATIVE REMEDIES—EXHAUSTED.

The shareholders of the Long Beach Association, represented by this appellee, the plaintiff, are afforded no right to any Administrative hearing or procedure and none was given them. The four seizure Orders were final, self executing Orders when issued, as pointed out in discussing jurisdiction for judicial review under the Administrative Procedure Act. (I. E. 2, p. 61, *supra.*) They were each issued in Washington, D. C., without prior notice, hearing or substantial cause, and concurrently executed the same day in California by the appellants.

Neither by statute, rule, regulation nor Order were the shareholders ever afforded any Administrative hearing, or relief for the unauthorized seizure of their properties in California.

The Long Beach Association was summarily seized May 20, 1946, under claim of color of title of Order No. 5254 purportedly adopted by the Federal Home Loan Bank Administration in Washington, D. C., on May 20, 1946. The Shareholders Protective Committee, acting on behalf of all shareholders of the Long Beach Association, as a class who had no other remedy available, commenced this action (5421-P. H. below) on May 27, 1946.

Administrative procedure cannot be invoked to obstruct a proceeding previously pending in the U. S. District Court.

Subsequently, the appellants set a belated, so-called Administrative hearing, for July 1, 1946. Neither the shareholder owners of the properties involved nor this appellee committee, their representative, were notified, nor

have they ever been made parties to any Administrative procedure, or hearing.

Where a board or commission sits in a judicial or quasi judicial capacity, notice is necessary to render their orders due process.

> *Interstate Commerce Com. v. Louisville & N. R. Co.,* 227 U. S. 88 at 91, 57 L. Ed. 431 (1913);
>
> *Morgan v. U. S.* 298 U. S. 468 at 480, 80 L. Ed. 1288 (1936);
>
> *Morgan v. U. S.,* 304 U. S. 1 at 15, 82 L. Ed. 1129 (1937).

Subsequently, after protests [R. 2914], the appellants adopted Home Loan Bank Board Order No. 139, on December 4, 1947, abandoning their Administrative hearing, and on January 17, 1948, adopted Order No. 388 rescinding the appointment of the conservator, partially confessing judgment and submitting the unconfessed issues to the U. S. District Court for decision.

Enjoined Order 2015 is another attempt by appellants to invoke their Administrative (so-called) procedure to obstruct and evade trial on the merits in a Court of competent jurisdiction.

These plaintiffs have no Administrative remedies.

In *Dwinell-Wright Co. v. National Fruit Products Co., Inc.,* 129 F. 2d 848 (1942), in enjoining a patent cancellation proceeding, the Court stated:

(Page 852):

> "It has long been settled that a court of equity which has first taken jurisdiction of a case may, in order to prevent vexations and harassing litigation, enjoin

the parties from further proceeding in another forum. . . ."

* * * * * * * *

(Page 853):

"Clearly, it is just as harassing and vexatious and there is just as much waste and duplication of effort involved in twice trying the same issue between the same parties, whether the second trial is before an Administrative tribunal or before a court." (Emphasis added.)

In *Columbia Broadcasting System v. U. S.,* 316 U. S. 407, 86 L. Ed. 1564 (1942), defendant Federal Communications Commission objected (as do the appellants here) that the plaintiffs must first seek to intervene before the Commission and exhaust Administrative procedure (apparently the plaintiffs there, unlike the plaintiff here, had an Administrative procedure). In reversing the dismissal, the U. S. Supreme Court said:

(Page 425):

". . . The ultimate test of reviewability is not to be found in an over-refined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by Administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow the results of which the regulations purport to control. . . ."

The U. S. District Court's judgment of January 23, 1948, ordering the Long Beach Association restored to its elected officers has become final.

Can the losing appellants now, by Administrative hearing before themselves, appoint themselves in their guise as the Federal Savings and Loan Insurance Corporation, receivers of the Long Beach Association, and themselves thereby nullify the final judgment of a Federal Court?

An Administrative hearing before a litigant is not proper appellate procedure to vacate a final judgment of a Federal Court.

Citizens should be protected by the rudimentary requirements of fair play, even in their dealings with Administrative Agencies. (*Morgan v. U. S.,* 304 U. S. 1 at 15, 82 L. Ed. 1129 (1937).)

V.

INABILITY OF ADMINISTRATIVE PROCEDURE TO AFFORD RELIEF REQUIRED.

An administrative hearing held in Washington, D. C., is incapable of:

(1) Adjudicating the title to properties, both real and personal, located in California.

(2) Rendering a decree removing clouds from the title or enforcing encumbrances on real or personal property within California (an order of an administrative tribunal in Washington, D. C., would not discharge the *lis pendens* recorded in Los Angeles County).

(3) Ordering the judge to sign the checks, or requiring the Clerk to pay out, distribute or release the approximately $14,000,000.00 of assets on deposit in the Registry of the U. S. District Court at Los Angeles.

An adminstrative tribunal in Washington, D. C., would not have jurisdiction over many of the parties, such as:

(1) The Title Service Company, a California corporation, holder of the legal title to the Southern California homes of approximately 8,000 borrowers,

(2) This plaintiff-appellee, Shareholder Members Protective Committee, nor the 16,000 shareholder owners, residents of Southern California, whose savings in the Long Beach Federal Savings and Loan Association are the *res,* the subject matter of the litigation,

(3) The non-resident Federal Home Loan Bank of Los Angeles and/or Portland and/or San Francisco, which ever exists, and which are "sue and be sued" corporations having their home offices in California.

They do business in California but not in Washington, D. C.

(4) The approximately 50 intervenors, title to whose approximately 400 parcels of real properties in Southern California were beclouded and encumbered by the actions of the defendant-appellants.

(5) Robert Wallis, who interplead, and claims, the $50,000.00 cashier's check now in deposit in the Registry of the U. S. District Court,

(6) And many others, parties not subject to the control of the appellants.

In class actions, such as this, where the subject matter and primary parties are within the U. S. District Court's jurisdiction, all members of all classes concerned must be bound by the decree and, hence, if necessary, preliminary injunctions should issue to restrain all parties of all classes to such litigation from instituting or participating in the piecemeal trial of such equitable actions in any other forum. (*Supreme Tribe of Ben Hur v. Cauble,* 255 U. S. 356, 65 L. Ed. 673 (1921).)

The obvious inability of an administrative tribunal sitting in Washington, D. C., more than 3,000 miles from the *situs* of the property, and having no jurisdiction over many of the parties primarily interested in the properties involved, is but the practical demonstration of the Rule that:

(Page 78):

> *"One trial of an issue is enough. The principles of res adjudicata apply to questions of jurisdiction as* well as to other issues—as well to jurisdiction of the subject matter as of the parties."
>
> *Treinies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940).

Only a Court having within its territorial jurisdiction the real and personal property involved in these two seizures can effectively adjudicate in one proceeding the rights and liabilities of all the parties interested in the properties seized and the multimillion dollar dealings therewith.

VI.
PRELIMINARY INJUNCTION—DISCRETIONARY.

The issuance of a Preliminary Injunction rests in the sound discretion of the trial court, Deckert v. Independence Shares Corp., 311 U. S. 282, 85 L. Ed. 189 (1940).

In *Prendergast v. N. Y. Telephone Co.,* 262 U. S. 43, 67 L. Ed. 853 (1923), a Preliminary Injunction was issued prior to conclusion of an Administrative hearing before the Public Service Commission. There, like here, the appellants urged that; the Court lacked jurisdiction; the pleadings were insufficient; the action was premature, the Administrative remedies were not exhausted, and the injunction was not supported by the evidence. All of these contentions were overruled, and the U. S. Supreme Court stated:

(Page 51):

> "It is well settled that *the granting of a temporary injunction, pending final hearing, is within the sound discretion of the trial court;* and that, upon appeal, an Order granting such an injunction will not be disturbed unless contrary to some rule of equity, or the result of improvident exercise of judicial discretion." (Citing cases.) (Emphasis added.)

In *Munoz v. Porto Rico Ry. Light & Power Co.,* 83 F. 2d 262 (1936)—certiorari denied 298 U. S. 689, 80 L. Ed. 1408, the Appellate Court, in refusing to dissolve a Preliminary Injunction, stated:

(Page 268):

> "It is a well established doctrine that an application for an interlocutory injunction is addressed to the sound discretion of the trial court; and that an Or-

der either granting or denying such an injunction will not be disturbed by an appellate court unless the discretion was improvidently exercised."

* * * * * * * *

"The Supreme Court generally disposes of appeals from interlocutory orders granting temporary injunctions by affirming upon the authority of cases, holding that the matter rests in the sound discretion of the trial court." (Citing cases.) (Emphasis added.)

The U. S. District Court in which there has been more than 100 hearings which have resulted in more than ten final judgments during the past five years, did not abuse its discretion in issuing a Preliminary Injunction in aid of its jurisdiction, to protect its final judgments, to prevent another $10,000,000.00 run, and to preserve the status quo, pending a trial on the merits.

CONCLUSION.

The U. S. District Court at Los Angeles had original jurisdiction of this action, brought by California residents to replevin local property and to remove all clouds to their title to such property. Such jurisdiction is founded upon several grounds:

First, the general jurisdiction of a local Court of Equity over local property *in rem* and *quasi in rem.*

Second, the Statutory jurisdiction specifically granted to the U. S. District Courts to quiet title to property within their jurisdiction (28 U. S. C. 1655).

Third, the general interpleader jurisdiction inherent in Courts of Equity, codified by Statutory provisions (28 U. S. C. 2361) and by F. R. C. P. (Rule 22).

Fourth, the jurisdiction over quiet title and replevin actions, such as this, and jurisdiction to review muniments of color of title, tendered by appellants as sole authority for exercising incidents of ownership over seized properties.

Fifth, the Administrative Procedure Act gives jurisdiction for judicial review of administrative orders (5 U. S. C. 1009.

Sixth, the inherent jurisdiction of courts to review unlawful administrative acts infringing upon personal rights.

Seventh, that it has become the Law of the Case and *res adjudicata* by virtue of the decisions of the U. S. Supreme Court and rulings of this 9th Circuit Court of Appeals in having denied leave to file Writs of Mandamus and/or Prohibition and/or Injunction and denied repeated applications for supersedeas, all of which upheld the attacked jurisdiction of the U. S. District Court.

Furthermore, it has become the Law of the Case and *res adjudicata,* by virtue of numerous final judgments, some by appeals dismissed and others by failure to appeal, but in all of which the jurisdiction of the U. S. District Court over both the subject matter and the parties has been recognized and accepted, either specifically or by implication, during the approximately five years of this litigation.

The U. S. District Court was not deprived of jurisdiction by the appellants' dilatory pleas, as

(1) the Sovereign is not a party and hence the Sovereign's immunity to suit is not involved,

(2) there are no indispensable parties in actions *in rem* or *quasi in rem,*

(3) these shareholders, as a class represented by this appellee, have no administrative remedies to exhaust—none were provided.

The proposed administrative tribunal (the Board) is a party defendant accused of fraud, and is incapable of impartially trying itself. It is, likewise, incapable of rendering appropriate relief as it does not have jurisdiction of either the *res* (property in California) nor of the parties (the California owners and claimants).

The U. S. District Court in exercise of, and to protect its jurisdiction, has power to, and should when necessary to preserve the *status quo* pending trial, and to prevent irreparable injury, enjoin all parties from instituting or participating in any proceeding other than that having jurisdiction over the property or *res* involved.

The issuance of a Preliminary Injunction to preserve the *status quo*, pending trial on the merits, rests in the sound discretion of the trial court, who may balance the equities to prevent irreparable injury.

The trial court did not abuse its discretion in protecting the financial reputation of the solvent Long Beach Association from the threat of a repetition of the $10,000,000.00 run of 1946, by issuing this Preliminary Injunction in aid of the court's jurisdiction and to prevent a multiplicity of harassing actions.

The trial court (1) has jurisdiction, (2) the pleadings state a cause of action, (3) and the issuance of a Preliminary Injunction to protect the court's jurisdiction, to prevent the matter being heard piecemeal in a multiplicity of actions, to prevent the irreparable injury of another $10,000,000.00 run, and to preserve the *status quo* pend-

ing the trial on the merits of the entire matter in one court *was not an abuse of discretion.*

Equity, once having acquired jurisdiction of a cause for any purpose, will retain and protect its jurisdiction for all purposes.

> "EQUITY DOES NOT DO JUSTICE BY HALVES OR PIECEMEAL."

It is respectfully submitted that the Preliminary Injunction appealed from should be affirmed.

Respectfully submitted,

WESTOVER & SMITH,
By WYCKOFF WESTOVER,
Attorneys for the Plaintiffs-Appellees.

APPENDIX.

Exhibit A.

Exhibit B.

LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION
JANUARY 1, 1945 TO JULY 15, 1949

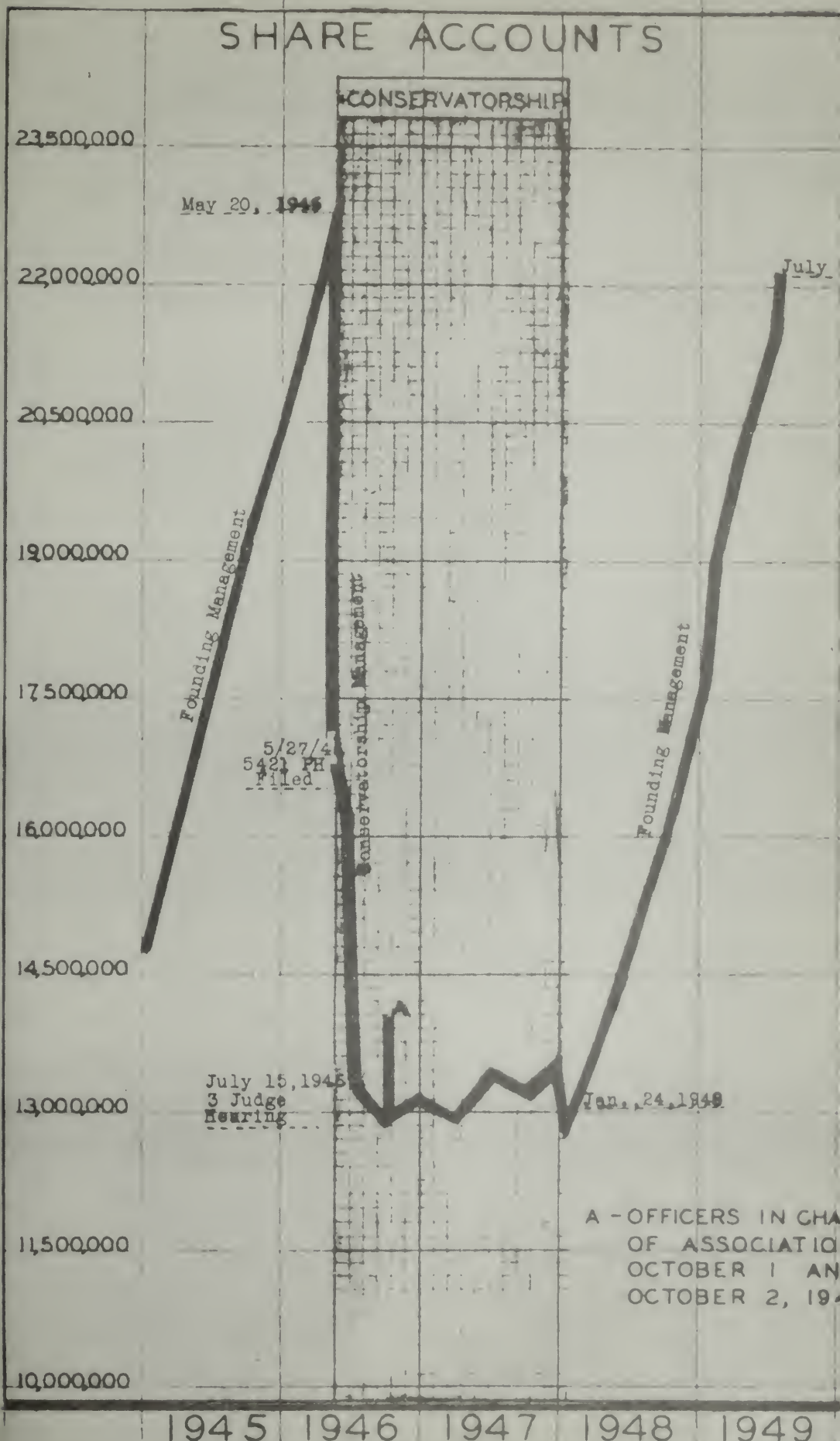

Exhibit D.

Civil Action No. 5421-P.H.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR SUBSTITUTION OF PARTIES PLAINTIFF.

The Plaintiffs, Flora E. Mallonee, Mabel E. Fergus and Winnie Bucklin, the presently constituted Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, in the above entitled class action, having filed on March 14, 1950 their Motion for Substitution of parties plaintiff, with supporting affidavits and points and authorities, and Notice of the time and place of hearing thereof, having been duly served upon counsel of record for all interested parties, and there having been no written objection filed to said motion, excepting only the opposition, filed by the defendants the Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann, and George K. Bramley, which opposition was joined in by the defendant Federal Home Loan Bank of San Francisco, and no others, the said Motion for Substitution of Parties Plaintiff, came on regularly for hearing in courtroom No. 1 in the Post Office and Federal Building at Los Angeles, on Monday, March 27, 1950, at the hour of 10 o'clock A. M., and there then and there appearing—

1. Wyckoff Westover, Esquire, of the firm of Westover & Smith, representing the plaintiffs, Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, and

2. Paul Fitting, Assistant United States Attorney, on behalf of Ernest A. Tolin, United States Attorney,

and William H. McKenna, Esquire, Assistant Counsel for the Home Loan Bank Board, representing the defendants, the Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann and George K. Bramley, and

3. Irving G. Bishop, Esquire, on behalf of Verne Dusenbery, Philip A. Angell, Irving G. Bishop and Sylvester Hoffman, Esquires, attorneys representing the defendant Federal Home Loan Bank of San Francisco, and

4. Charles K. Chapman, Esquire, representing the cross-complainant Long Beach Federal Savings and Loan Association;

And there having been presented no affidavits or oral or documentary evidence other than that submitted by the plaintiffs, and the matter having been argued and submitted, and the court being fully advised in the premises, Now Finds:

Findings of Fact.

1. That the plaintiffs herein Flora E. Mallonee, Mabel E. Fergus and Winnie Bucklin, are the presently duly and regularly licensed Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, (License No. 80282 LA, Receipt No. LA 69192, renewed January 1, 1950, issued pursuant to Chapter 385 of the Statutes of 1949 of the State of California, Department of Investment, Division of Corporations), and

2. That Notice of the hearing of said Motion for Substitution of parties plaintiff, was duly and regular given.

3. That this Court has heretofore after extended hearings, by various orders, held that it has jurisdiction of the parties and subject matter of the within litigation, from certain of which orders appeals were taken by the Home Loan Bank Board and/or its agents, and thereafter dismissed, and upon which order, as well as said other orders so holding, the time to appeal has passed for a considerable period.

4. That the above entitled class action was instituted on May 27, 1946 by Paul L. Mallonee, Winnie Bucklin, and C. H. Newhouse, for and on behalf of the shareholder members of the Long Beach Federal Savings and Loan Association, and

5. That said Paul L. Mallonee, Winnie Bucklin, and C. H. Newhouse were then a duly constituted Shareholder Members Protective Committee, and became duly licensed by the Department of Investment of the State of California, Division of Corporations, License No. 80282 LA.

6. That on May 19, 1948 C. H. Newhouse passed away in the City of Long Beach, County of Los Angeles, State of California.

7. That thereafter Mabel E. Fergus was duly substituted in the place and stead of C. H. Newhouse, deceased, to be a member of said Shareholder Members Protective Committee.

8. That on June 3, 1949, Paul L. Mallonee passed away in the City of Long Beach, County of Los Angeles, State of California.

9. That thereafter his widow, Flora E. Mallonee, was duly and regularly substituted in the place and stead of her husband, said Paul L. Mallonee, deceased, to be a member of said Shareholder Members Protective Committee.

10. That at all times since the commencement of this class action, the Shareholder Members Protective Committee has been duly and regularly constituted and has been the real plaintiff in the above entitled class action.

Conclusions of Law.

From the foregoing Findings of Fact the court now makes and renders its Conclusions of Law, that:

1. The above entitled class action did not abate by the death of said C. H. Newhouse, nor by the death of said Paul L. Mallonee, nor at all, but survives and continues as a class action for and on behalf of all of the shareholder members of the Long Beach Federal Savings and Loan Association, and as to all other issues and matters raised by the pleadings of the various parties.

2. That the motion for the substitution of Mabel E. Fergus in place and stead of C. H. Newhouse, deceased, and for the substitution of Flora E. Mallonee in place and stead of Paul L. Mallonee, deceased, should be granted.

JUDGMENT.

Wherefore, It Is Hereby Ordered, Adjudged And Decreed that the Motion of the plaintiffs Flora E. Mallonee, Mabel E. Fergus, and Winnie Bucklin, the presently constituted Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, to be substituted as plaintiffs in the above entitled action be and is hereby granted, and the said—

1. Mabel E. Fergus is substituted in place and stead of C. H. Newhouse, deceased, to be a plaintiff in the above entitled class action, and

2. Flora E. Mallonee is substituted in place and stead of Paul L. Mallonee, deceased, to be a plaintiff in the above entitled class action.

3. This Order of Substitution of parties plaintiffs is a final judgment and the court expressly determines that there is no just reason for delay and expressly directs and orders the forthwith entry of this judgment of substitution of parties plaintiff.

Dated at Los Angeles, this 5th day of April, 1950.

PEIRSON M. HALL,
Peirson M. Hall,
Judge of the United States District Court.

Entered April 5, 1950, Book 65, page 99.

[Clk. Tr. 19216.]